

# Town of Derry New Hampshire



**ZONING ORDINANCE  
JANUARY 6, 2000**

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2000

# Town of Derry New Hampshire



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JANUARY 6, 2000**



# For Reference

## HISTORY

Not to be taken from this room

### Adoption and Effective Date

This Zoning Ordinance was adopted on January 5, 1993 by vote of the Derry Town Council, and became effective February 5, 1993 and amended from time to time.

All zoning provisions and zoning maps in effect prior to February 1, 1993 have been repealed.

### RECORD OF AMENDMENTS

ARTICLE/SECTION/PART AMENDED	SUBJECT MATTER	EFFECTIVE DATE
Article 1300 (New)	Interim Growth Mgmt. Ord.	Dec. 14, 1994
Article 600	Light Industry - Insert "H"	Jan. 3, 1995
Article 700, Section 709 Part B	Floodplain - Insert #4	Jan 3, 1995
Article 2000 (New)	Aquifer Ordinance	May 4, 1995
Article 600, Section 611.1 (Add A.7)	Community Oriented Rec Fac.	June 4, 1995
Articles 200, 300, 600, 1100	Sexually Oriented Bus. (New)	Aug. 10, 1995
Article 1300 (Readoption)	Interim Growth Mgmt. Ord.	Dec. 14, 1995
Article 1300	Interim Growth Mgmt. Ord.	(Expired)
"Town Wide Rezoning"	Adopt Land Uses & Zoning Map	Jan. 9, 1997
Article 500 Section 501	Delete Office/R&D Dev.	Feb. 6, 1997
Article 200 Section 202	Wireless Communication Facilities Defined	Feb 20, 1998
Article 300 Section 323 (New)	Telecommunications Regulation	Feb. 20, 1998
Article 600 (Several sections amended)	To implement the provisions of Section 323.2 (A), (B) & (C)	Feb. 20, 1998
Article 500, Sections 501 & 502-A	Re Rockingham Road parcels	10/1/98
Article 600, Section 601-I	Replace 601.5 w/601.4 (Corrects Typo)	1/1/99
Article 600, Section 613 (New)	Industrial V District	2/5/99
Article 600, Section 604.4 (New)	OMB Dimensional Requirements	3/18/99
Article 600, Section 605.5 (New)	ORD Dimensional Requirements	3/18/99
Article 1300 (Replaces Expired Interim GMO)	Growth Management Ordinance (New)	4/2/99
Article 600, Section 614.4 MHDR	Special Exception Uses Added	10/7/99
Articles 500 & 501	General Town Wide Rezoning (Court Decision)	12/16/99
Article 323, Section 323.2A.4, & 323.2 B	Wireless Communciation	1/6/00

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## ARTICLE 100 - TITLE, AUTHORITY AND PURPOSE

### Section 101 - Short Title

This ordinance shall be known and may be cited as the Zoning Ordinance of the Town of Derry, New Hampshire, hereinafter referred to as "this Ordinance."

### Section 102 - Authority

This Ordinance is adopted pursuant to the authority granted by Chapter 674 et seq., New Hampshire Revised Statutes Annotated, as amended.

### Section 103 - Purpose

This Ordinance, together with associated maps, is enacted for the purpose of promoting the health, safety, and general welfare of the community. It is the intent of this Ordinance:

- A. To lessen congestion in the streets;
- B. To secure safety from fires, panic and other dangers;
- C. To provide adequate light and air;
- D. To prevent overcrowding of land;
- E. To avoid undue concentration of population;
- F. To facilitate the adequate provision of transportation, solid waste facilities, water, sewerage, schools, parks, child day care;
- G. To assure proper use of natural resources and other public requirements; and
- H. To give reasonable consideration to, among other things, the character of the area involved and its peculiar suitability for particular uses, as well as with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality.

## ARTICLE 200 - DEFINITIONS

For the purpose of this Ordinance, certain terms or words herein shall be interpreted as follows:

### Section 201 - Word Definitions

The word person includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.

The present tense includes the future tense, the singular number includes the plural and the plural number includes the singular.

The words "shall" and "will" are mandatory; the word "may" is permissive.

### Section 202 - Term Definitions

**ABUTTER:** Abutter means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration.

**ACCESSORY USE:** A building or use subordinate and customarily incidental to the main building or use on the same lot. The term "accessory building" when used in connection with agriculture shall include all buildings customarily used for farm purposes.

**AGRICULTURE:** Any area of land, including structures thereon, that is used for agricultural purposes, including forestry. This includes the raising of cows, horses, poultry, and other livestock; horticulture and orchards; logging of a forest, woodland, or plantation; selling of products primarily grown or raised directly on such land; and the building, altering or maintaining of woods roads, agricultural roads, skidways, landings, fences, drainage systems, and farm ponds.

**APARTMENT HOUSE:** A building arranged or intended or designed to be occupied by three or more families living independently of each other and doing their cooking upon the premises, or by three or more individuals living independently but having a common heating system and a general dining room.

**AVIATION:** The operation of, or any function associated with, aircraft.

**BANK:** An establishment for the custody, loan, exchange, or issue of money for the extension of credit and for facilitating the transmission of funds, whether it is a drive-through, drive-up or conventional walk-up and walk-in use.

**BED & BREAKFAST:** See definition of TOURIST HOME.

**BUILDING:** A constructed unit forming a shelter for persons, animals or property and having a roof and being permanently located on the land. Where the context allows, the word "building" shall be construed as followed by the words "or part thereof."

**BUILDING, FRONT LINE:** Line parallel to the front lot line transecting that point in the building face which is closest to the front lot line.

**BUILDING HEIGHT:** Vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat and mansard roofs, and to the average height between the eaves and the ridge for other types of roofs.

**CAMPGROUNDS:** Recreation park area of not less than ten (10) acres which is suitable for camping/tenting and which is provided with electricity, water, sanitary and solid waste disposal facilities and with one or more service buildings, all conforming to the regulations of the State of New Hampshire. Direct access to the campgrounds shall be from a state highway.

**CAMPING TRAILER:** A non-self-propelled structure, mounted on wheels, requiring for occupancy the unfolding or erection of articulated parts and designed for travel, recreation and vacation use.

**CARE AND TREATMENT OF ANIMALS:** The building or use for veterinary establishment, riding school or kennels.

**CEMETERY:** A use designed for a burial ground of the dead, either public or private, authorized under the laws of the State of New Hampshire.

**CENTRALIZED SEWER SYSTEMS:** Any disposal system designed to locate waste treatment facilities in one area of a development to serve as the disposal system for the entire development and approved for the site by the Department of Environmental Services.

**COMMERCIAL RECREATION BUILDING:** Structures used as auditoriums, indoor theaters, pool halls, bowling alleys, indoor tennis courts, indoor swimming pools, health clubs or handball courts.

**COMMERCIAL SERVICE:** Commercial service includes barber, hairdresser, health spa, beauty parlor, shoe repair, shoe shine, laundry, laundromat, dry cleaner, photographic studio, and businesses providing similar services of a personal nature.

**COMMUNITY FACILITIES/USES:** See definition of PUBLIC USES.

**CONTRACTOR'S YARD:** Carpenter shop, plumbing, electrical, roofing, contracting, or similar service establishment.

**COVERAGE:** That percentage of the lot area covered by a building. Where not otherwise specified, coverage shall be limited by setback requirements.

**CREMATORIUM:** A use to reduce (a dead body) to ashes by the action of fire. It is a use generally associated with funeral establishments or may be a separate use designed for cremation.

**DRIVE-IN RESTAURANT OR REFRESHMENT STAND:** Any place or premises used for the sale, dispensing or serving of food, refreshments or beverages to customers in automobiles, including those establishments where customers may serve themselves and may eat or drink the food, refreshments or beverages on the premises.

**DWELLING, SINGLE FAMILY DETACHED:** A free-standing residence designed for and occupied by one family only.

**DWELLING, TWO FAMILY (also DUPLEX):** A residential building designed for occupancy by two families living independently of each other in individual attached dwelling units.

**DWELLING, MULTI-FAMILY:** A residential building designed for occupancy by three or more families with the number of families in residence not exceeding the number of dwelling units provided. Proposals for multi-family dwellings shall be subject to review and approval in accordance with the Town of Derry Non-residential Site Plan Review Regulations.

**DWELLING UNIT:** A combination of rooms connected together, constituting an independent housekeeping establishment containing cooking, sanitary and sleeping facilities for owner occupancy, rental or lease, and physically separated from any other rooms or dwelling units which may be in the same structure. It shall include sectional homes and modular units provided these units meet the standards of the local building code, but shall not include motel, hotel, lodging house or similar structures.

**ESSENTIAL SERVICES FACILITY:** Buildings reasonably necessary for the furnishing of such services, by public utility companies, as gas, electrical, sewer, steam or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduit cables and similar equipment and accessories in connection therewith.

**FAMILY:** An individual or two or more persons related by blood, marriage or law.

**FUNERAL ESTABLISHMENT:** A facility for the preparation of the dead for burial or cremation, of viewing of the body, and for funerals.

**GROUP DAY CARE FACILITY:** A group day care facility shall be taken to mean both child and adult day care, unless otherwise noted, for a part, but not all, of a twenty-four-hour day.

**GROUP RESIDENCE:** Group residence shall include home for the aged, orphanage, children's home, rest home, extended care facility, student dormitory and similar types of group living accommodations.

**HOME OCCUPATION/BUSINESS:** A use of a professional or service character that has been customarily carried out in the home and conducted within the dwelling by the resident-owner thereof which is clearly secondary to the dwelling use for living purposes, and which does not change the character thereof.

**HOSPITAL:** Includes sanitarium, nursing home, convalescent home and other place for the diagnosis, treatment or care of human ailments, licensed for in-patient care by the State of New Hampshire, and its subsidiary structures located on the same lot as the primary facility, including, but not limited to, clinics, medical offices, laboratories and support buildings.

**JUNK:** means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled or wrecked automobiles, or parts thereof, iron, steel and other old or scrap ferrous or nonferrous material.

**JUNK YARDS:** 1. Any place of storage or deposit, whether in connection with a business or not, where two or more unregistered or old motor vehicles no longer intended or in condition for legal use on the highways are held, whether for the purpose of resale of used parts, for the purpose of reclaiming for use some or all of the materials whether metal, glass, fabric or otherwise, or to dispose of them or for any other purpose. The term includes any place of storage or deposit for any purposes of used parts or materials from motor vehicles which, when taken together, include in bulk two or more vehicles.

2. An establishment or place of business which is maintained, operated or used for storing, keeping, buying or selling junk or for the maintenance or operation of an automobile graveyard, and includes garbage dumps and sanitary fills. The word does not include any motor vehicles registered with the Director of Motor Vehicles under RSA 261:104 and controlled under RSA 236:127.

3. It shall not include an establishment operated by a firm or individual registered under the laws of the State of New Hampshire as a new or used motor vehicle dealer, provided the establishment only has wrecked or ruined motor vehicles which are still registered and are not kept or stored for a period exceeding 160 days. Such dealer shall maintain records showing the owner of the vehicle, the number and state of vehicle registration, and the date of its original entrance upon this premises.

**LIGHT INDUSTRY:** The assembly, manufacture, processing or other industrial operations conducted in such a manner that all resulting cinders, dust, fumes, gas, odors, smoke, vapor and waste or emissions are effectively confined to the premises or disposed of so as to avoid any environmental pollution, and conducted in such a manner that the noise level at the property line will not exceed 80 decibels, and flashing and vibration shall not be perceptible off-site.

**LODGING HOUSE:** Any dwelling (other than a hotel or motel) in which living accommodations, without individual kitchen facilities, are rented to three or more non-transient guests. A boarding room or rooming house shall be deemed a lodging house.

**LOT:** A lot is a parcel of land occupied, or to be occupied, by only one main building and the accessory building or ~~uses~~ customarily incidental to it, except as may otherwise be provided herein. A lot shall be of sufficient size to meet minimum zoning requirements for use, coverage and area, and to provide such yards and other open spaces as are herein required.

**LOT AREA:** The horizontal area of the lot lying within the lot lines, exclusive of any area in a street right-of-way.

**LOT, CORNER:** A lot situated at the intersection of, and abutting, two streets which have an angle of intersection of not more than 135 degrees. A lot abutting on a curved street shall be deemed a corner lot if the tangents to the curve at its point of intersection with the side lot lines meet at the interior angle of not more than 135 degrees.

**LOT, FRONT LOT LINE:** That lot line which directly abuts the street side of the lot, except for lots which have multiple lot lines which abut streets, in which case the front lot line shall be deemed to be that lot line (abutting a street) which the front entrance of a dwelling or building faces.

**LOT MEASUREMENTS:**

Depth of a lot means the average horizontal distance from the street line of the lot to its opposite rear line measured in the general direction of the side lines of the lot. Width of a lot means the distance measured across the minimum front setback line.

**LOT OF RECORD:** A lot which is part of a subdivision of record in the office of the County Register of Deeds, or a lot or parcel described by metes and bounds, the description of which has been so recorded.

**MAIN BUILDING OR USE:** A building or use which houses or constitutes the principal activity on the premises. This shall also include the principal building.

**MANUFACTURED HOUSING:** Any structure, transportable in one or more sections, which, in the traveling mode, is eight (8) body feet or more in width and forty (40) body feet or more in length or, when erected on site, is three hundred and twenty (320) square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. Manufactured housing as defined herein shall not include pre-site built housing as defined herein.

**MEMBERSHIP CLUB:** Building or use catering to club members and their guests for recreational and social purposes, and not operated primarily for profit.

**MOBILE HOME:** See definition of MANUFACTURED HOUSING.

**MOTEL:** A building, or group of buildings, which contains four or more apartments or living accommodations for ten or more persons, with or without kitchens, and which constitutes primarily the temporary abode of persons who have their residence elsewhere. This shall include hotels.

**MOTOR HOME:** A portable, temporary dwelling to be used for travel, recreation and vacation, and constructed as an integral part of a self-propelled vehicle.

**MUNICIPAL FACILITIES/USES:** See definition of PUBLIC USES.

**NON-COMPLYING BUILDING:** A non-complying building means a structure, or part thereof, not in compliance with the zoning ordinance covering building bulk, dimensions, height, area, yards, or density laws, ordinances and regulations prior to the enactment of this Ordinance.

**NON-CONFORMING USE:** A use which lawfully occupied a building or land on the effective date of this Ordinance or amendments thereto, and that does not conform to the use regulations of the district in which it is located.

OFFICE: Place where the business of a commercial, industrial, service or professional organization is transacted.

OFF-LOT SEWER: The provision that sewer shall be by municipal disposal only.

OFF-LOT WATER: Provision of water from a source not located on the same lot as the building for which the water is provided. When the source is not municipal water, the adequacy of the source shall be determined by review of the Planning Board, the Town Engineer and appropriate state authorities.

ON-LOT SEWER: Sewage disposal by means located on the same site as the building in which the sewage is generated.

OUTDOOR STORAGE: Storage not in a structure, provided that any storage material other than new equipment, new building material, or other new products displayed for sale, is fenced or screened.

PARKING FACILITY: A use dedicated to the outdoor storage of registered motor vehicles which may be at ground level, below ground, and/or above ground. Such use shall be devoted to the parking of passenger cars, and shall specifically exclude unregistered motor vehicles and trucks registered over one ton.

PARKING SPACES, OFF-STREET: For the purposes of this Ordinance, an off-street parking space shall consist of a space adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room. Required off-street parking areas for three or more automobiles shall have individual spaces marked and shall be so designed, maintained and regulated that no parking or maneuvering incidental to parking shall be on any public street, walk, or alley, and so that any automobile may be parked without moving another.

PRE-SITE BUILT HOUSING: Means any structure designed primarily for residential occupancy, which is wholly or in substantial part made, fabricated, formed, or assembled in off-site manufacturing facilities in conformance with the United States Department of Housing and Urban Development minimum property standards and local building codes, for installation, or assembly and installation, on the building site. For the purposes of this Ordinance, pre-site built housing shall not include manufactured housing as defined herein.

PRODUCE STAND: Seasonal sale of flowers, garden supplies, or agricultural produce designed to serve customers principally traveling by automobile.

PUBLIC USE: Uses by agencies and departments of local, county, state and federal governments including:

- Cemetery: May include burial ground, mausoleum, cemetery vaults and necessary maintenance structures.
- Education: Includes such functions as elementary, middle, junior high and high schools, college, vocational or technical school, kindergarten, and similar educational institutions.

- Institution: Public facilities primarily engaged in public services such as health and research.
- Office: Includes such functions as office, laboratory, library, post office, clinic, assembly and court.
- Public Safety: Includes such functions as fire, police, rescue, and ambulance services.
- Public Water, Public Sewer: Water supply and sewage disposal systems approved by the town for municipal operation.
- Recreation: Includes such functions as recreation center, senior citizens center, gymnasium, auditorium, and outdoor recreation facilities such as play fields, tennis courts and golf courses.
- Service: Includes such functions as garage, warehouse, vehicular repairs, outside storage for vehicles and supplies, and similar uses.
- Waste Treatment: Includes areas or structures for disposal of sewage, solid waste and garbage under the control of a governmental unit, including incinerators, sewage treatment plants, and similar methods of disposal.
- Waste Water Treatment: The process, either public or private, of cleaning water which carries wastes from homes, businesses and industries that is a mixture of water and dissolved or suspended solids, in association with required water purification standards. Such use shall include all necessary functions of waste water treatment with the exception of storage of sludge and other waste materials.

**PUBLISHING:** Publishing shall also include printing and related types of operations.

**RESEARCH & DEVELOPMENT FACILITY:** A combination of office and laboratory or light manufacturing space used exclusively for the purpose of new product research or development. The limitations set forth in the Research Lab definition shall otherwise apply to Research & Development Facilities.

**RECREATIONAL FACILITY, OUTDOOR:** Outdoor recreational activities including such facilities as outdoor tennis courts, swimming pools, golf courses, play fields, and similar uses. No buildings shall be allowed except for the necessary related uses such as rest rooms and maintenance facilities.

**REMOVAL OF NATURAL MATERIAL:** The removal of natural material is the removal of loam, sand, gravel, stone or other fill material for sale in commercial quantities, or for the use in another location.

**RESEARCH LAB:** A use that provides for experimental study, and is not of a manufacturing nature, and at least 50% of the floor space shall be used for office space, and no activities shall result in heavy trucking.

**RESTAURANT:** Restaurant shall include diner, cafe and cafeteria, and shall not include drive-in restaurants. It shall be an eating establishment which is primarily designed for its patrons to eat at tables, booths or a counter. Take-out refreshments are only incidental to the main purpose of the establishment.

**RETAIL STORE:** Includes shop and store for the sale of retail goods and department store; and shall exclude any drive-in service, free-standing retail stand, gasoline service and motor vehicle repair service, new and used car sales and service, trailer and mobile home sales and service, and commercial service.

**SERVICE AREA:** The area adjacent to a building entrance, usually in the rear, through which supplies are received and waste materials are moved.

**SEXUALLY ORIENTED BUSINESS:** Any and all businesses described in Section 322 of the Zoning Ordinance.

**SIGN:** Any device having a display surface on one or both sides to inform or attract the attention of persons not on the premises on which the sign is located; provided, however, that the following shall not be included in the application of the regulations contained herein:

- A. Signs not exceeding one square foot in area and bearing only property numbers, post office box numbers, names of occupants of premises, or other identification of premises.
- B. Flags and insignia of any government except when displayed in connection with a commercial promotion.
- C. Legal notices, identification, informational, or directional signs erected as required by governmental bodies.
- D. Signs directing and guiding traffic and parking on private property, but bearing no advertising.

**SIGN, SURFACE AREA:** The surface of a sign shall be computed as including the entire area within a regular geometric form, or combinations of regular geometric forms, comprising all of the display area of the sign, and including all of the elements of the matter displayed. Frames and structural members not bearing advertising matter shall not be included in the computation of the surface area.

**SPECIAL EXCEPTION:** A specific enumerated use of a building or lot which may be permitted under this Ordinance only upon application to the Board of Adjustment and subject to the approval of the Board in accordance with the conditions pertinent thereto, and only in cases where the words "Special Exception" in this Ordinance pertain.

**STREET LINE:** Right-of-way line of a street as dedicated by subdivision plat or a deed of record. Where the width of the street is not established, the street line shall be considered to be twenty-five (25') feet from the center line of the street pavement or as designated in the Master Plan.

**STREET, PUBLIC:** A public right-of-way which the town or state has the duty to maintain regularly or a right-of-way shown on a subdivision plat approved by the Planning Board, recorded with the County Registry of Deeds, constructed to town specifications, and duly accepted by the municipality, which provides the principal means of access to abutting property.

**STRUCTURE:** Anything constructed or erected having a fixed location on the ground, or attached to something having a fixed location on the ground. Structures include, but are not limited to, buildings, swimming pools, billboards, and poster panels. It shall not include minor installations such as fences less than three and one-half (30') feet high, agricultural and safety fences, mail boxes, and flag poles.

**SUBDIVISION:** The division of the lot, tract, or parcel of land for the purpose, whether immediate or future, of sale, rent, lease, condominium conveyance, or building development. It includes resubdivision and, when appropriate to the context, relates to the process of subdividing, or to the land or territory subdivided. The division of a parcel of land held in common and subsequently divided into parts among the several owners shall be deemed a subdivision.

**TOURIST HOME:** Any owner-occupied dwelling (other than a hotel or motel) in which living accommodations without individual kitchen facilities are rented to ten or fewer transient guests, none of whom shall stay for more than fourteen (14) days in any one calendar year.

**TRAVEL TRAILER:** A vehicular, portable, non-self-propelled structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational, and vacation uses, having a body width not exceeding eight (8) feet, and a body length not exceeding thirty-two (32) feet.

**TRUCK TERMINAL:** A facility for transfer of merchandise and the repair, maintenance, and servicing of tractor trucks and trailers used for the transportation of such merchandise.

**USE, PERMITTED:** Use specifically allowed in a zoning district excluding illegal uses and non-conforming uses.

**VARIANCE:** Such departure from the terms of this Ordinance as the Board of Adjustment, upon appeal in specific cases, is empowered to authorize only under applicable statutes of the State of New Hampshire.

**VEHICULAR SALES OR REPAIR FACILITY:** Enclosed establishment for the display, sale, and repair of new and used motor vehicles, trailers, motorcycles, motor homes and boats. No retail sale of gasoline or retail sale of oil permitted, except as incidental to the repair facility. Outdoor display of new and used equipment may be permitted.

**VEHICULAR SERVICE STATION:** Any area of land, including the structures thereon, that is used for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles, and which may include facilities used for polishing, greasing, washing, spraying, dry cleaning, mechanical repairs, or otherwise cleaning or servicing such motor vehicles. A service station is not a vehicular sales or repair facility as defined herein.

**WAREHOUSE:** A fully enclosed building used for bulk storage of goods and merchandise, including bulk sales outlets and self-storage units.

**WIRELESS COMMUNICATIONS FACILITIES:** Any towers, poles, antennas or other structures intended for use in connection with transmission or receipt of radio or television signals, or any other electromagnetic spectrum-based transmission/receptions. (Effective 2/20/98)

**YARD:** That portion of a lot not occupied by a building or structure. Porches, whether enclosed or unenclosed, shall be considered as part of the main building and shall not project into a required yard.

**YARD, FRONT/SETBACK:** Yard between the front lot line and the front of a building extended to the side lot lines of the lot. The depth of the front yard shall be measured from the street line to the front line of the building.

**YARD, REAR:** Yard between the rear lot line and the rear line of a principal or accessory building extended to the side lot lines of the lot. The depth of the rear yard shall be measured from the rear lot line to the rear line of the building.

**YARD SALE:** The sale of excess items by a family from its residence to customers coming to the residence to view and purchase the items. It shall include garage, lawn, attic, tag and porch sale, and similar expressions intending to convey such type of sales.

**YARD, SIDE:** Yard between the principal building or accessory building and a side lot line, and extending through from the front yard to the rear yard.

## ARTICLE 300 - GENERAL PROVISIONS

### Section 301 - Prohibition of Junkyards

No junk yard or place for the storage of discarded machinery, vehicles, or other materials shall be permitted in any district.

### Section 302 - Lots

No permit shall be granted for the construction of, or placement of, a building or dwelling on a lot in any district unless said lot shall comply with the following requirements:

#### 302.1 - Residential Lots

Each residential lot shall meet the requirements for the Zoning District in which it is located, as set forth in Articles 400, 500, 600 herein; provided said lot meets the requirements of the New Hampshire Department of Environmental Services.

#### 302.2 - Pre-existing Residences

The provisions of Section 302.1 shall not be deemed to prohibit the construction or placement of accessory buildings or improvements or enlargements of pre-existing dwellings or accessory buildings or improvements on residential lots existing at the time of adoption of the preceding amended Section 302, if said proposed building, improvement or enlargement shall not violate any applicable setback requirements of this Ordinance, and provided said building or improvement meets the requirements of the New Hampshire Department of Environmental Services.

### Section 303 - Building Limitation

Only one residential building or dwelling shall be situated on a lot.

### Section 304 - Approved Street

Each residential lot shall face on an approved street.

### Section 305 - Setbacks

All buildings or dwellings shall have a front setback of at least thirty-five (35) feet, or shall conform with the average setback of the structures three hundred (300) feet from either side of the building on the same side of the street. Side and back line setbacks shall be a minimum of fifteen (15) feet.

## Section 306 - Commercial and Industrial Buildings

No commercial or industrial building shall be constructed or placed on a lot smaller than that required for a dwelling.

## Section 307 - Public Sewer

Buildings or businesses not connected to the public sewer shall be required to contain an additional ten thousand (10,000) square feet of lot size above the minimum for the zone for each two hundred (200) gallons per day of sewage effluent after the first two hundred (200) gallons per day unless the owner can show adequate plans for sewage disposal on a smaller lot.

## Section 308 - Non-Residential Use; Parking

Any nonresidential use established or expanded after the effective date of this Ordinance shall provide adequate off-street parking for employees and customers on land held in the same title as the nonresidential use.

## Section 309 - Churches

Churches, together with their customary accessory uses, shall be permitted in any zoning district of the Town of Derry.

## Section 310 - Offensive Uses

No use that is injurious, noxious, or offensive to the neighborhood by reason of emission of odor, fumes, dust, smoke, vibration, noise, or other cause shall be permitted in any district.

## Section 311 - Site Plan Review

All development or change or expansion of use of land or buildings for nonresidential uses or for multi-family dwelling units, whether or not such development includes a subdivision or resubdivision of the site, shall be subject to review and approval or disapproval by the Planning Board in accordance with the provisions of this Ordinance and the Town of Derry Land Development Control Regulations.

## Section 312 - Conservation Corridor Buffer Zone

A buffer zone of at least one hundred and twenty-five (125) feet shall be required between a septic tank or an absorption field and the Conservation Corridor Overlay District.

### Section 313 - Waste Disposal System

No waste disposal systems shall be located closer than seventy-five (75) feet to any wetland.

### Section 314 - Erosion and Siltation

All construction, forestry and agricultural activities within one hundred (100) feet of any wetland shall be undertaken with special care to avoid erosion and siltation into the wetlands.

### Section 315 - Wetland Setbacks

No buildings shall be located closer than seventy-five (75) feet to any wetland one acre or larger in size, and no building shall be located closer than thirty (30) feet to any wetland less than one acre in size.

Where an existing use within the setback is destroyed or in need of extensive repair, it may be rebuilt provided that such rebuilding is completed within one year of the event causing destruction. The new or rebuilt use shall not extend further into the wetland or setback area than the original use.

### Section 316 - Community Water Systems

All community water systems, including the well lots where pump house and wells are located, shall be deeded to the Town of Derry upon satisfactory completion and testing of the entire system. The town ownership of the community water system shall include the water main, pipes from the water main to the pump house, pipes from the pump house to the wells, the well system, the well lot, and all water service lines from the water main to the property line or water service curb stop. Well lots shall be of sufficient size to encompass at least the entire area within the required protective exclusion radius.

### Section 317 - Building Provisions

- A. Permit Required - Any person proposing to erect or construct any building or structure, or proposing to alter any existing building or structure must first obtain a permit from the Building Inspector.
- B. Application, Decision and Compliance - Before a permit shall be issued by the Building Inspector, he shall determine whether the proposed work complies with all applicable provisions of this Ordinance and all other applicable building, electrical, fire, and other codes, ordinances and regulations of the Town of Derry. A specific blueprint or other appropriate record of the approved plan shall be filed with the Building Inspector before a building permit is issued.

The Building Inspector shall act to approve or disapprove the building permit application within ten (10) days of the receipt of said application. The Building Inspector shall

make inspections of all buildings in the process of construction and shall report any violations to the Town Council.

- C. Permit to be Withheld - No permit shall be issued for construction or alteration unless the proposed structure will present a reasonable appearance and will be in keeping with the neighborhood, and unless the building is to be finished on the exterior in a permanent manner and is to be suitably painted on the outside whenever the same is of wood or a material customarily painted. This is intended to eliminate the erection of structures obviously out of place for the neighborhood where they are located and which may be detrimental to property values and neighborhood character.
- D. Permit Duration and Renewal - Building permits shall be valid for one (1) year from the date of issuance. Said permits may be renewed for a period of one (1) year provided that construction under the original permit was commenced during the first year. On a new building, "construction commenced" shall mean the completion of at least the foundation. After the foundation is constructed, buildings must be completed within one (1) year unless the permit is extended by the Building Inspector for good cause. All permits issued prior to the enactment of this Ordinance shall expire one (1) year from the date of enactment of this Ordinance unless renewed as provided herein.
- E. Permit Fees - The building permit fee schedule shall be as is contained in the 1990 BOCA National Building Code, as amended. Renewal fee as applicable.
- F. Construction Requirements - Unless otherwise specified in the 1990 BOCA National Building Code, as amended, the following construction requirements shall apply:
  - 1. Foundations shall be constructed of concrete, brick, cement block, or stone except that industrial structures and accessory buildings or residences intended for summer occupancy only may be set on brick, stone or concrete piers. By special permit of the town Building Inspector where soil conditions may require, timber post may be used.
  - 2. Chimneys shall be constructed of concrete, brick, or stone and lined with standard flue linings for chimneys from the ground. All chimney entrances shall be of fireproof construction.
  - 3. Buildings must be framed according to good building practice, and outside walls shall be covered with fire resistant or wood shingles, siding, clapboard, stucco, or brick and other materials approved by the Fire Chief. Buildings of materials customarily painted shall be painted.
  - 4. Pitch roofs must be constructed according to good building practice and covered with wood, tile, asphalt, slate, or cement asbestos shingles or other suitable roofing material.

5. Sewage: All dwellings and buildings in public uses shall be equipped with sewage disposal systems approved by the New Hampshire Water Supply and Pollution Control Division. If the sewer line comes within one hundred (100) feet of the property line, or for special use of lagoons, refer to Sewer Ordinance and amendments thereto.
6. Electrification: All dwellings and buildings when wired for electricity shall be wired in accordance with the 1990 National Electrical Code (National Fire Protection Association Document # 70).

### Section 318 - Buffer Zones

In all Industrial District Zones and in the Office/Research & Development District, before any building, parking lot, or driveway can be constructed that is non-residential in nature and abuts a residence or residential district, a buffer zone will be established with the following minimum characteristics:

- A. It shall be a minimum of fifty (50') feet wide.
- B. It shall be landscaped and maintained with the purpose in mind to diminish the effect of lighting, sound and odor created by the nonresidential use.
- C. Minimum plantings for the buffer zone shall be three rows of coniferous type trees running parallel with the residential district. These trees shall have a minimum height of six (6') feet, and be planted at a distance of twelve to sixteen (12' to 16') feet on center. They shall be staggered so as to present a more dense buffer zone. Landscaping of the buffer zone shall be approved by the Planning Board.

### Section 319 - Temporary Use of Manufactured Housing

The Building Inspector may issue a temporary occupancy permit, upon application, for the use of a manufactured housing unit as a temporary residence or as a temporary construction office only after a building permit has been issued for a new or replacement structure, and under the following conditions:

- A. Temporary Residence - Such unit may be used only by the owner of the primary residence where the primary residence has been damaged by fire or other unforeseen event.
- B. Temporary Construction Office - Such unit may be used by the contractor for office use only.
- C. A unit to be used as a temporary residence shall be connected to approved water supply and wastewater disposal systems in accordance with state and local requirements.

- D. Any such unit shall be located on the lot where the construction activity is occurring, and shall be placed so as to comply with the setback requirements of the district in which it is located.
- E. The temporary occupancy permit shall be valid for a period of one (1) year. The Building Inspector may renew said permit for an additional year, upon application made at least thirty (30) days prior to the expiration date, provided the construction has been diligently pursued and it can be shown that the work will be completed (under a valid building permit) within the renewal period.
- F. The temporary residence or construction office shall be removed from the lot within thirty (30) days of the issuance of the occupancy permit for the new or replacement structure.

#### Section 320 - Accessory Apartment

The creation of an accessory apartment in an existing single family detached dwelling shall be subject to all of the following conditions:

- A. The lot on which the existing single family detached dwelling is situated must have the minimum area required for the zoning district in which it is located.
- B. Where municipal sewer is not provided, the owner shall have written approval from the Water Supply and Pollution Control Division of the New Hampshire Department of Environmental Services stating that the septic system meets the requirements for the combined use.
- C. Off-street parking shall be provided for at least four (4) vehicles.
- D. The total floor area of the existing structure cannot be increased by more than ten (10%) percent to accommodate the accessory apartment.
- E. The floor area of the accessory apartment cannot exceed four hundred (400) square feet, nor can the floor area of the existing dwelling unit be decreased to less than eight hundred (800) square feet.
- F. The accessory apartment must be contained within or be attached to the existing dwelling or be within a structure which is attached to the existing dwelling.
- G. The conversion of an independent free-standing accessory structure for the purpose of creating an accessory apartment is prohibited.
- H. The accessory apartment shall be composed of and limited to a kitchen, a living room, one (1) bedroom, and a bathroom.
- I. Room sizes in the primary dwelling unit and in the accessory apartment must conform to the minimum requirements of the BOCA One and Two Family Dwelling Code.

- J. Once an accessory apartment is created under this Section, no further conversion of the structure will be allowed for purposes of creating an additional dwelling unit.
- K. An accessory apartment shall not be permitted in conjunction with any special exception.
- L. An accessory apartment shall not be permitted if a variance has already been granted or would be needed for the lot with respect to the provisions of Section 302, subsections 302.1 and 302.2, or of Sections 303, 304, 305, or 307.
- M. The structure and the lot shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the existing single family dwelling.

### Section 321 - Manufactured Housing

Manufactured Housing built to the existing Town code, 1990 BOCA National Building Code, shall be allowed in all areas of the Town where residential construction is presently allowed, under the same conditions as conventional single family housing in the same district must meet.

### Section 322 - Sexually Oriented Businesses (Effective 8/10/95)

#### Purpose and Intent

The Town of Derry, through its Planning Board, conducted several public hearings regarding the concentration of sexually oriented businesses within the Town of Derry and the secondary effects of such businesses upon the health, safety and general welfare of the town. At these public hearings, several citizens presented information regarding the adverse secondary effects of the concentration of sexually oriented businesses on the community. The Planning Board also received and reviewed printed materials and reports regarding the adverse secondary effects of such businesses on the community. All such material and testimony is a part of the record of the Planning Board in recommending amendments to the Zoning Ordinance addressing the concentration of sexually oriented businesses and the adverse secondary effects of such concentration upon the health, safety and general welfare of the community.

Based upon the record established by the Planning Board, it is the purpose and intent of this section to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the town of Derry; and it is the intent to promote the health, safety and general welfare of the citizens of the Town of Derry and it is the intent of this section that the regulations be utilized to prevent problems of blight and deterioration which accompany and are brought about by the concentration of sexually oriented businesses; and the provisions of this section have neither the purpose nor the effect of imposing limitation or restriction on the content of any communicative materials, including sexually oriented materials; and it is not the intent nor the effect of this section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment to the Constitution of the United States of America, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended markets; and, neither is the intent nor effect of this section to condone and legitimize the distribution of obscene material.

## B. Definition of Sexually Oriented Businesses.

A sexually oriented business is any place of business at which any of the following activities is conducted:

Adult Bookstore or Adult Video Store - An establishment that devotes more than 15% of the total display, shelf, rack, wall, table, stand or floor area, utilized for the display, sale, rental, or distribution for consideration or offers for sale, rental, or for any other form of consideration of the following, or an establishment which, as one of its principal business purposes, offers for sale, rental, or for any other form of consideration, any one or more of the following:

- a. Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, video reproductions, slides, tapes, records, CD-Roms or other forms of visual or audio representations which depict or describe specified sexual activities or specified anatomical areas or meet the definition of harmful to minors and/or sexual conduct as set forth in RSA 571-B:1; or,
- b. Instruments, devices or paraphernalia which are designed for use in connection with sexual conduct as defined in RSA 571-B:1, other than birth control devices.

An establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual conduct or activities and still be categorized as adult bookstore or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore or adult video store so long as one of its principal business purposes is offering for sale or rental or for other consideration to specified material which depict or describe specified sexual conduct or activities or specified anatomical areas.

An adult bookstore or adult video store does not include an establishment that sells, rents, or distributes for any other form of consideration or offers for sale, rent, or distribution for any other form of consideration material described in sections 1(a) or 1(b) hereof, as an incidental or accessory part of its principal stock in trade, does not devote more than 15% of the total display area of the establishment to the sale, rent, or distribution of material described in sections 1(a) or 1(b) hereof, and such enterprise does not constitute a principal business purpose.

2. Adult Motion Picture Theater - An establishment with a capacity of five or more persons, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which meets the definition of harmful to minors and/or sexual conduct as set forth in RSA 571-B:1, for observation by patrons.

3. Adult Motion Picture Arcade - Any place to which the Public is permitted or invited, wherein coin or slug-operated, electronically or electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, in which a substantial portion of the total presentation time of the images so displayed is devoted to the showing of material which meets the definition of harmful to minors and/or sexual conduct, as set forth in RSA 571-B:1.

4. Adult Drive-In Theater - An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration to persons in motor vehicles or an outdoor seats, in which a substantial portion of the total presentation time being presented for observation by patrons is devoted to the showing of material which meets the definition of harmful to minors and/or sexual conduct as set forth in RSA 571-B:1.
5. Adult Cabaret - A nightclub, bar, restaurant, or similar establishment which during a substantial portion of the total presentation time features live performances which meet the definition of harmful to minors and/or sexual conduct as set forth in RSA 571-B:1, and/or feature films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which is devoted to showing of material which meets the definition of harmful to minors and/or sexual conduct as set forth in RSA 571-B:1.
6. Adult Motel - A motel or similar establishment offering public accommodations of any form of consideration which provides patrons with closed circuit television transmissions, films motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis upon the depiction or description of materials which meet the definition of harmful to minors and/or sexual conduct as set forth in RSA 571-B:1.
7. Adult Restaurant - A bar, restaurant, retail seller of food and/or beverage for consumption on premises or off premises, or any similar establishment which employs, hires, contracts with, or uses any person to person any service for such bar, restaurant, retail seller of food and/or beverages for consumption on premises or off premises, or any similar establishment in a state of nudity.
8. Adult Theater - A theater, concert hall, auditorium or similar establishment either indoor or outdoor in nature, which for any form of consideration, regularly features live performances, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis on activities which meet the definition of harmful to minors and/or sexual conduct as set forth in RSA 571-B:1.
9. Nude Model Studio - A place where a person who appears in a state of nudity or displays male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals and is observed, sketched, drawn, painted sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration and such display is characterized by an emphasis on activities which meet the definition of harmful to minors and/or sexual conduct as set forth in RSA 571-B:1.
10. Sexual Encounter Center - A business or commercial enterprise that as one of its principal business purposes, offers for any form of consideration: (a) physical contact in the form of wrestling or tumbling between persons of the same or opposite sex where such physical contact is characterized by an emphasis on activities which meet the definition of harmful to minors and/or sexual conduct as set forth in RSA 571-B:1; or (b) activities between male and female persons and/or persons of the same sex when one or more persons is in the state of partial nudity or nudity.

11. Terminology Definitions - The following terms shall have the following meanings for the purposes of this ordinance:

- (a) **Nude or nudity** shall mean the showing of:
  - [i] human male or female genitals or pubic area with less than a fully opaque covering; or
  - [ii] any portion of the anal cleft or cleavage of the male or female buttocks. Attire that is insufficient to comply with this requirement includes, but is not limited to, g-strings, t-back thongs, and other clothing or covering that does not completely and opaquely cover the anal cleft or cleavage of the male or female buttocks; or
  - [iii] the portion of the human female breast directly or laterally below a point immediately above the top of the areola with less than a fully opaque covering; this definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other clothing, provided the areola is not exposed; or
  - [iv] human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- (b) **Principal business purposes** shall mean that such activity constitutes at least ten percent (10%) of the gross revenues of the establishment at the specific location operated by the establishment.
- (c) **Specific anatomical areas** shall mean and include any of the following:
  - [i] the fondling or other erotic touching of the human genitals, public regions, buttocks, anus, or female breasts;
  - [ii] sex acts, normal or perverted, actual or simulated, including intercourse, copulation or sodomy;
  - [iii] masturbation, actual or simulated; or
  - [iv] excretory function as part of or in connection with any of the activities set for in [i], [ii], or [iii] above.
- (d) **Specified sexual conduct or activities** shall mean the male genitals in a state of sexual arousal and/or the vulva or intimate parts of the female genitals.
- (e) **Substantial portion of total presentation time** shall mean the presentation of films or shows for viewing on more than seven (7) days within any 56 - consecutive day period.

## C. Locational Requirements

Sexually oriented businesses, as defined in this Section 322, shall be permitted in the General Commercial District, provided that all of the regulations, requirements and restrictions for the General Commercial District are met; and the following conditions, regulations and requirements are met:

1. Separation of Uses - Sexually oriented businesses shall not be permitted within 1,000 feet of another existing sexually oriented business or one for which a building permit or a zoning certificate of use has been applied for.
2. Use Setbacks - Sexually oriented businesses shall not be permitted within 450 feet of:
  - (a) any residence or any building used principally as a residence such as an apartment building or rooming house;
  - (b) indoor and/or outdoor amusement establishment;
  - (c) any church, place of worship, parish house, or convent;
  - (d) public, parochial or private school, or kindergarten;
  - (e) licensed day care an/or day nursery, or state approved day care center;
  - (f) public sports or recreation park;
  - (g) any building, structure, property, or marker designated as historic by any federal, state, or local board, agency, or commission.
3. Zoning District Setbacks
  - (a) Sexually oriented businesses shall not be permitted within 450 feet of the following zoning district boundaries:
    - I. any residential district;
    - ii. any industrial district '
    - iii. Central Business District;
    - iv. Office/Business District; and
    - v. Neighborhood Commercial District.
  - (b) Sexually oriented businesses are prohibited in all zoning districts within the Town of Derry, other than the General Commercial District.
4. Setback From Governmental Offices - Sexually oriented business shall not be permitted within 450 feet of any building owned or used by the Town of Derry or any other governmental agency for governmental purposes.
5. Town Setback - Sexually oriented business shall not be permitted within 450 feet of the Town line.
6. Restrictions Within A Building - Sexually oriented business shall not be permitted within a building, premises, or structure, or other facility that constitutes or includes a sexually oriented business.

#### D. Measure of Distance

The distance between any sexually oriented business and other named point of reference shall be measured in a straight line, without regard to intervening structures, from the closest property line of the site identified in paragraphs 1 through 5 above and the closed exterior wall of the building in which the sexually oriented business operates. When the measurement of distances involve a geographic boundary, the point of reference shall be deemed to be the boundary.

#### E. Application Procedures

**Planning Board/Site Plan Approval** The Planning Board shall review and approve, or approve with conditions, or disapprove applications for sexually oriented businesses under site plan regulations for the Town of Derry. When approving applications, the Planning Board may impose reasonable restrictions for buffering, outdoor lighting, signage, parking, adequate ingress and egress from the site off and on to public roads, pedestrian movement, and provide for appropriate landscaping and building aesthetics consistent with the site plan regulations for the Town of Derry, New Hampshire and avoid site development layout which may result in negative environmental impact to ensure that any displays of merchandise visible to the general public are in conformity with N.H. RSA 571-B.

#### F. Applicability

This Ordinance shall be effective upon passage. Any sexually oriented business which was in operation prior the adoption of this section shall be subject to the provisions of Article 1200, Section 1203.

#### G. Enforcement

Notwithstanding any other provision of this Ordinance, any person, partnership, corporation, or other entity who is found in violation of this ordinance shall be subject to a fine in an amount not to exceed \$100 per day for each violation.

#### H. Severability

The invalidity of any subsection or provision in this Section 322 shall not invalidate any other subsection or provision thereof.

### Section 323 - Wireless Communications Facilities (Effective 2/20/98)

#### 323.1 - Purpose and Intent

The purpose of this section is to establish regulations for Wireless Communications Facilities. The goals of this section are:

1. To protect residential areas and lands by minimizing adverse impacts of towers;

2. To encourage the location of towers in non-residential and otherwise appropriate zoning districts;
3. To minimize the total number of towers in the community;
4. To encourage the joint use of new and existing tower locations;
5. To ensure that towers are located in areas that minimize adverse impacts;
6. To ensure towers and antennas are configured in a way that minimizes adverse visual impacts by careful design, appropriate siting, landscape screening, and innovative camouflaging techniques;
7. To enhance the ability to provide telecommunications services to the community quickly, effectively and efficiently;
8. To consider public health and safety impact on the community of the telecommunications facilities;
9. To avoid damage to adjacent properties from tower failure through careful engineering and locating of tower structures;
10. To encourage the attachment of antennas to existing structures;
11. To facilitate the provision of telecommunications services throughout the municipality

323.2 Wireless Facilities - Regulation and Performance Criteria: The location, placement on a lot construction of wireless communications facilities shall be in accordance with this section as follows:

A. 1. Construction of wireless communications facilities are prohibited in the following Districts, except as provided in the Telecommunication Overlay Zone.

Medium High Density Residential District (MHDR)  
 Medium Density Residential District (MDR)  
 Manufactured Housing Park District (MHPD)  
 Multi-Family Residential District (MFRD)  
 Central Business District (CBD)  
 General Commercial District (GC)  
 Office Business District (OBD)  
 Low Density Residential District (LDR)  
 Low Medium Density Residential District (LMDR)

2. Construction of wireless communication towers shall be allowed in the following Telecommunication Overlay Zone:

<u>Tax Map No.</u>	<u>Parcel No.</u>
101	0115 0115-1 through 15
	0118
	0119
	022-1
	022-8 through 11
	022-11-1
102	0119-1 through 30

<u>Tax Map No.</u>	<u>Parcel No</u>
107	022-1
	022-2 through 7
	023-3
	023-3-1
	023-3-2
	023-4
	024
	025
	028
	0218

3. Construction of wireless communications facilities are a permitted use by right in the following Districts only if the criteria of Table D of this section are met.

Industrial I District (IND-I)  
 Industrial II District (IND-II)  
 Industrial III District (IND-III)  
 Industrial IV District (IND-IV)  
 Office/Medical/Business District (OMB)  
 Office Research & Development District (ORD)

4. Towers shall be at least three-quarters (3/4 mile) of a mile apart. (Effective 1/6/00)

B. 1. Co-location is the sharing of telecommunication facilities by more than one wireless provider. This ordinance encourages that wireless communications antenna be placed on an existing wireless facility tower if it is physically and legally possible. Antennas may be attached to an existing tower which is in compliance with all requirements of this section, as long as the height of the tower is not increased. The new antenna and any telecommunications support facilities must comply with all applicable regulations in this ordinance. If a tower is replaced to accommodate collocation, only one tower may remain on the lot. (Effective 1/6/00)

2. In order to facilitate the maximum use of an existing tower, promote co-location and to reduce the potential for new towers, where an existing tower is on a non-conforming lot or is a valid pre-existing non-conforming use, the Zoning Board of Adjustment shall grant a special exception to allow additional antennas on such existing towers and additional ground support facilities if all of the following conditions are met:

- a. There is no increase in the existing height of the tower.
- b. The proposed expansion of any ground support facility and buildings shall otherwise meet all setback requirements and any buffer restrictions applicable to the lot.
- c. The Board finds that the proposed expansion to the wireless communication facility is necessary and essential to providing the applicant's telecommunication service.

**In granting a special exception, the Board of Adjustment may impose conditions, including buffers or screening to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed expansion on adjoining properties and preserve the intent of the ordinance. .(Effective 1/6/00)**

- C. Variances to this section by the Zoning Board of Adjustment are subject to Site Plan Review.
- D. Wireless Facility Performance Criteria (See Table D), attached hereto.
- E. All new ground towers shall be subject to Site Plan Review. The assessment and review of each application for a wireless facility's compliance with the performance criteria of Table D shall be the responsibility of the Building Inspector after consultation with the Planning Director. This assessment shall be in writing and provided to any Board or authority exercising jurisdiction over the application. Applications for collocation of antenna on existing facilities shall be expedited and, unless there is an additional impact on the site caused by the addition, site plan approval shall be waived upon such a finding by the Building Inspector.
- F. As part of the Site Plan Review process, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers in the event that the tower is abandoned and the tower owner is incapable or unwilling to remove the tower. Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within ninety (90) days of the issue date of the notice to remove the tower or antenna. If the abandoned tower is not removed within 90 days the Municipality may execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.
- G. Towers are allowed only in the zoning districts set forth in sub-section A.2 and A.3 and shall be considered a permitted use in that zone. The existence of another structure or use on the same zone lot shall not preclude the installation of a tower provided all other requirements are met, that is in compliance with the regulations contained herein and the structure is permitted by right for the zone in which it is located.
- H. Towers and/or antennas shall meet the following requirements, all of which shall be reviewed as part of the Planning Board Site Plan Review.
  - 1. The design of towers, antennas, and telecommunications support facilities shall use materials, colors, textures, screening, landscaping that create compatibility with the natural setting, surrounding structures and minimize impact on surrounding properties.

2. The towers, antennas and telecommunication support facilities shall be constructed in a manner of material which ensures the safety of the public, abutters and occupants of the lot upon which the structure is constructed. If there is a health safety concern, the Planning Board may require such engineering or other scientific studies to determine the issue as it deems appropriate at the applicant's expense. All towers shall conform to National Tower Code ANSI/EIA/TIA0222-F".
3. Signs shall be limited to those signs required for cautionary or advisory purposes only.
4. Towers —
  - a. Setbacks and Height - Height and setback requirements are governed by Table D. Tower height shall be the distance measured from the lowest point within ten (10') feet of the structure to the highest point on the tower or other alternative tower structure, including the base pad and any antenna attached to the tower.
  - b. Color - Towers shall be finished in a color to reduce visual obtrusiveness, and meet the requirements of sub-section 1, subject to any applicable standards of the Federal Aviation Administration (FAA).
  - c. Support facilities and buildings associated with towers shall, in addition to the setback and height requirements of Table D, maintain the minimum setback requirements of the zone district in which it is located.
  - d. Support facilities and buildings associated with towers shall provide solid view-obscuring security fencing not less than eight (8') feet in height.
  - e. Support facilities and buildings associated with towers shall provide landscaping in accordance with the following requirements:
    - i. The tower compound shall be landscaped with a buffer of plant materials that effectively screens the view of the tower base and support facilities from property used for residences. The standard buffer shall consist of a landscaped strip of at least five (5') feet wide outside the perimeter of the improvements and shall provide for and maintain suitable landscaping on the remainder of the lot so as to accomplish the purpose of this section.
    - ii. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived by the Planning Board as part of the Site Plan Review process.
    - iii. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. For towers located on large, wooded lots, natural growth around the property perimeter may be considered a sufficient buffer.

- f. Lighting - Towers shall not be artificially illuminated unless required by the Federal Aviation Administration (FAA) or other governmental regulation. Ground level security lighting not more than twenty (20') feet in height may be permitted if designed to minimize impacts on adjacent properties.
- 5. Antennas — installed on a structure other than a tower.
  - a. Height - Height of the antenna shall be governed by Table D.
  - b. Telecommunications support facilities -
    - 1. Telecommunications support facilities may be located on the roof of a building, subject to applicable building and safety or fire codes.
    - 2. The antenna and telecommunications support facilities shall be a neutral color that is identical to, or closely compatible with, the color of the supporting structure.

I. Application — The provisions of this ordinance and the Town of Derry Site Plan Review regulations, where applicable, shall govern all applications for wireless communications facilities . In order for an application to be acted on, the following must be submitted in addition to any requirements required under the Site Plan Review regulations contained in the Land Use Regulations of the Town of Derry.

- 1. a. The first application for a permit by a provider or an applicant for a provider shall include an inventory of all of that provider's existing towers, antennas, or sites approved for towers or antennas, that are either within Derry or within two thousand (2,000') feet of the border thereof;
- b. A vicinity map drawn to scale showing adjacent land uses within one thousand (1,000') feet, including those in adjacent municipalities.
- c. A scaled set of plans containing the following information in addition to information required the Municipality's Site Plan Review regulations :
  - 1. Location and legal description of the proposed site;
  - 2. Type and height of the proposed tower;
  - 3. On site land uses and zoning;
  - 4. Adjacent roadways;
  - 5. Proposed means of access;
  - 6. Setbacks from property lines;
  - 7. Architectural elevation drawings of the proposed tower, antenna and any other telecommunications support facilities;
  - 8. Site topography;
  - 9. Parking;
  - 10. A landscape plan showing specific landscape materials and details;
  - 11. The method of fencing, finished color and, if applicable, the method of camouflage and illumination.

- d. An affidavit from the owner of the property acknowledging that the owner of the property is responsible for the removal of a tower that is abandoned or is unused for a period of twelve (12) months. The landowner is only responsible in the case of the insufficiency of the bond that is specified in Section 323.2(F).
- e. All towers, antennas and telecommunication support facilities shall meet applicable regulations of the Federal Aviation Administration (FAA). The engineer preparing the site plan shall certify that such requirements are met.

2. Regardless of whether Site Plan Review is required, every applicant for an antenna shall provide the Building Inspector with the information required in sub-section I(1)c, d & e of this section.
3. The Building Inspector may share information, except for the confidential proposed system design, with other applicants applying for administrative approvals or use exceptions under this section or other organizations seeking to locate towers/antennas in Derry, except that the Building Inspector is not, by sharing such information, in any way representing or warranting that such sites are available or suitable for any use.
4. Inventory and tracking — The Building Inspector shall compile a list of towers and maintain and update the same from information furnished by all service providers.

TABLE D - WIRELESS FACILITY PERFORMANCE, CRITERIA

	MHPD, MFRD, NC, CBD, GC, OBD, MDR, MHDR, LDR, & LMDR	IND-1, IND-II, IND-III, IND-IV, OMD, ORD, & TELECOMMUNICATION OVERLAY ZONE
D.1 Antenna to be affixed to a new (proposed) ground tower	Not Allowed	<p>Allowed Maximum Tower Height - 190 feet</p> <p>Setbacks – The GREATER distance by application of the following:</p> <ol style="list-style-type: none"> <li>(1) 50% of tower height plus 10 feet from site boundaries or residential structures; or</li> <li>(2) All facilities must meet setback requirements of Derry's Zoning Ordinance and Land Development Control Regulations (LDCR).</li> <li>(3) The tower shall be fenced to a minimum height of 8 feet with 2 strands of barbed wire.</li> <li>(4) Site Plan Review required.</li> </ol>

TABLE D (Cont'd)

	MHPD, MFRD, NC, CBD, GC, OBD, MDR, MHDR, LDR, & LMDR	IND-1, IND-II, IND-III, IND-IV, OMD, ORD, & TELECOMMUNICATION OVERLAY ZONE
D.2 Antenna to be affixed to an existing building without a roof tower.	Not Allowed	<p>Allowed</p> <p>(1) Antenna May be placed on a facade or roof of conforming building or structures without regard to height or setback of the building.</p> <p>(2) Antenna support structures will be considered to be roof towers if the height of the structure exceeds 10 feet above permitted height of building.</p>
D.3 Antenna to be affixed to a new (proposed) roof tower.	Not Allowed	<p>Roof towers may be placed on the roof of a conforming building using either of the following to determine tower height and setback.</p> <p>(1) Tower height above the roof may be as high as the setback distance to the nearest roof edge.</p> <p>(2) The heights allowable for a ground tower may be used for a roof tower if the required setbacks for a ground tower are met.</p>
D.4 Antenna to be added to an existing approved or permitted tower	Not Allowed	<p>Allowed</p> <p>Allowed if the following conditions are met:</p> <p>(1) The tower height is not increased.</p> <p>(2) No ancillary features are added to the tower other than antenna, required safety hardware, and ancillary equipment buildings.</p> <p>(3) All conditions of the previous tower approval have been satisfied.</p>
D.5 Existing non-conforming tower	N/A	Subject to zoning requirements concerning non-conforming structures.
D.6 Ancillary equipment building(s)	Not Allowed	Subject to all requirements of appropriate zone (i.e., bulk, setback, etc.)

### 323.3 Applicability

#### A. Amateur Radio and Citizen Band Radios.

This section shall not govern any tower, or the installation of any antenna that is owned and operated by a federally licensed amateur radio station operator and the tower or antenna is used for the exclusive purpose of amateur radio operations. This application adopts the provisions and limitations as referenced in RSA 674:16, IV.

#### B. This section shall not govern the installation of any antenna that is used for the exclusive purpose of facilitating the use of a Citizen Band Radio, except any towers in this section shall be limited to seventy (70') feet in height.

#### C. Receive Only Antennas

This section shall not govern any tower, or the installation of any antenna that is used exclusively for receive only antennas, except any towers in this section shall be limited to seventy (70') feet in height.

#### D. Home Business Antennas

This section shall not govern or the installation of any antenna that is used exclusively for a home business in a residential zone, except any towers in this section shall be limited to seventy (70') feet in height.

#### E. Essential Services & Public Utilities

Wireless communications facilities shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in the Municipality's ordinances or regulations.

#### F. Public Property

The provisions of this section shall not apply to antennas or towers located on property owned, leased or otherwise controlled by the Municipality.

#### G. Existing Towers

The provisions of this section shall not apply to the addition of antenna to existing wireless communications towers as of the effective date of this ordinance unless the addition of such will increase the height of the tower or otherwise additionally impact the existing tower's site modifications to existing towers, except as set forth in the preceding sentence, shall be subject to the terms thereof.

### 323.4 Severability

The invalidity of any sub-section or provision of this Section 323 shall not invalidate any other sub-section or provision thereof.

## ARTICLE 400 - DISTRICTS

For the purpose of this Ordinance, the Town of Derry is divided into zoning districts as follows:

- A. GC, General Commercial District
- B. CBD, Central Business District
- C. OBD, Office/Business District
- D. OMB, Office/Medical/Business District
- E. ORD, Office/Research & Development District
- F. NC, Neighborhood Commercial District
- G. MHPD Manufactured Housing Park District
- H. I-1, Industrial District-I
- I. I-III, Industrial District-II
- J. I-III, Industrial District-III
- K. I-IV, Industrial District-IV
- L. MFR, Multi-Family Residential District
- M. I-V, Industrial District-V
- N. MHDR, Medium-High Density Residential District
- O. MDR, Medium Density Residential District
- P. LMDR, Low-Medium Density Residential District
- Q. LDR, Low Density Residential District

In addition, the Floodplain Development Overlay District, the Conservation Corridor Overlay District, and the Wetlands Conservation Overlay District and the Groundwater Resource Conservation District shall be considered as overlays of all zoning districts, and, pursuant to Article 1700, shall be deemed to be applicable if conflicting with the requirements of any underlying zoning district.

Section 501 - Zoning Map

The locations of the Derry zoning districts are as shown on the "Official Zoning Map of the Town of Derry, New Hampshire" which consists of the Tax Map Overlays updated to July 20, 1995. Included with these are the Flood Insurance Rate Maps and the Floodway and Flood Boundary Maps of the Town of Derry dated April 15, 1981, as well as the Flood Insurance Study, both of which were prepared by the Federal Emergency Management Agency; and the Prime Wetlands Maps and the Prime Wetlands Report dated November 11, 1986 which are incorporated herein by reference. Reference is also made to the maps described in Article 2002, Groundwater Resource Conservation District.

Section 502 - District Boundaries

Where a boundary is indicated as a highway, street, railroad, watercourse, or town boundary, it shall be construed to be the centerline thereof, or such town boundary. The "Official Zoning Map of the Town of Derry, New Hampshire" is the authoritative reference for the following district boundary descriptions. For identification of parcels not specifically included by tax map and parcel number, please refer to the Zoning Map.

District boundaries, described with respect to tax map and parcel numbers, are listed as follows:

A. GC, GENERAL COMMERCIAL DISTRICT (Amended 10/1/98, 12/16/99)

<u>Tax Map No.</u>	<u>Parcel No.</u>
103	039 and 0310
	0317
	0335
	0335-1
	0335-9
	0335-10
	0336
	0336-1
	0337
	0338
	0372
	0372-1
	0373
	0373-1
	0378

Tax Map No. Parcel No.  
104 0330  
0331 through 0334

Tax Map No. Parcel No.  
109 0374  
0376 through 0381  
0381-1  
0381-2  
0382  
0383-7  
0384 through 0386  
0387  
0387-1  
0388 through 0392  
0393  
0394  
0396  
0396-5  
03129  
03129-1

Tax Map No. Parcel No.  
115 03117-25  
0395

Tax Map No. Parcel No.  
116 3011  
2654 and 2655  
26145-1  
26164 and 26165  
26166 through 26168  
26169 and 26170  
26171  
26172  
26173  
26209 and 26210  
26211 and 26212  
26213 through 26216  
26217  
26221  
26246  
26247  
2795 and 2796  
2797 and 2798  
29129

<u>Tax Map No.</u>	<u>Parcel No.</u>
116 (Cont'd)	29138 and 29139 29140 through 29142 29143 through 29149 29192 through 29196 29197 29199 and 29200 29201
 <u>Tax Map No.</u>	 <u>Parcel No.</u>
117	057 058 059 0510 0510-1 0511 0512-1-1 0513 0532 0534 0534-1 0537 0552 0552-1
 <u>Tax Map No.</u>	 <u>Parcel No.</u>
122	356 through 358 358-1 359 through 3513 3514-3 and 3514-4 3613 through 3616 3667-1 through 3667-7 3667-12
 <u>Tax Map No.</u>	 <u>Parcel No.</u>
123	0547 through 0549 0550 0550-1 0551 0553 0553-1 0562 through 0564 0565-1
 <u>Tax Map No.</u>	 <u>Parcel No.</u>
128	0873-1 0873 through 0876 3514-2 3514-5

Tax Map No. Parcel No.  
129 3774 through 3779  
3782

Tax Map No. Parcel No.  
134 08098 through 08102

Tax Map No. Parcel No.  
135 0896  
0896-1

**B. CBD, CENTRAL BUSINESS DISTRICT**

Tax Map No. Parcel No.  
116 271  
272-1  
272  
2789  
2790 through 2794  
30253  
30252  
30187  
30186  
30183 through 30185  
30181  
30182  
30172 through 30180  
30208  
30207  
30206  
30205  
301 through 306  
308 through 3010  
30135 through 30146  
30146-1  
30117 through 30127  
30130 through 30134  
30147 through 30163  
3012 through 3020  
3022 through 3025  
3026-1  
3026-2

Tax Map No. Parcel No.  
116 3026-3  
3027  
3033

Tax Map No.  
116 (Cont'd)

Parcel No.  
3034  
3037 through 3049  
3049-1  
3049-2  
3050-1  
3050-2  
3051 through 3063  
3065  
3067 through 3078  
3080 through 3083  
26174 through 26179  
27136 through 27138  
29168 through 29191

Tax Map No.  
122

Parcel No.  
321 through 324  
3085 through 30111  
328  
3143  
3144  
3151  
3153  
3171  
3172-1  
3172  
3173  
3174  
3180  
3181 through 3184

Tax Map No.  
122

Parcel No.  
3189 through 3191  
3213 through 3217  
3218 through 3229  
3230-3233  
32122  
32123  
32124  
3516 through 3518  
3520  
3521 through 3525  
3531  
3531-1  
3534 through 3536  
3544

Tax Map No.

Parcel No.

122 (Cont'd) 3617  
3617-1  
3617-2  
3618 through 3620  
3620-1

Tax Map No. Parcel No.  
128 0880 through 0895

**C. OBD, OFFICE/BUSINESS DISTRICT**

Tax Map No. Parcel No.  
116 2626 Through 2628  
2632 and 2633  
2642 through 2653  
2657 and 2658  
2665 and 2665-1  
2666  
2666-1 and 2666-2  
2667  
26114  
26122 through 26125  
26141  
26145 through 26149  
29135 through 29137  
29202 and 29203

**D. OMB, OFFICE/MEDICAL/BUSINESS DISTRICT (Amended 12/16/99)**

Tax Map No. Parcel No.  
116 273  
274  
275  
276-1 through 2712  
2713  
2725  
2726  
2737-2  
2738 through 2741  
2759 through 2765  
2782 through 2786  
2787  
2787-1  
2788

Tax Map No. Parcel No.

117 258  
0543  
0543-1  
281 through 285  
2714  
2715

E. ORD, OFFICE/RESEARCH & DEVELOPMENT DISTRICT (Amended 2/6/97)

Tax Map No. Parcel No.  
102 0127  
0128  
0270  
02149

Tax Map No. Parcel No.  
108 0270  
0282  
0282-1  
02146 through 02148

Tax Map No. Parcel No.  
114 0282

Tax Map No. Parcel No.  
115 051  
052  
0590  
0590-1  
03110

F. NC, NEIGHBORHOOD COMMERCIAL DISTRICT (See Sec. 606)

G. MHPD, MANUFACTURED HOUSING PARK DISTRICT (Amended 12/16/99)

Tax Map No.      Parcel No.  
103                    0315  
                          0316

Tax Map No.      Parcel No.  
107                    0222  
                          0222-1  
                          0222-2  
                          0222-3  
                          0222-4  
                          029

Tax Map No.      Parcel No.  
113                    2125  
                          2125-1

Tax Map No.      Parcel No.  
117                    056  
                          0512

Tax Map No.      Parcel No.  
150                    141  
                          147

H. IND I, INDUSTRIAL DISTRICT – I (Amended 12/16/99)

Tax Map No.      Parcel No.  
102                    0121  
                          0121-1  
                          0267  
                          3023

Tax Map No.      Parcel No.  
107                    0219  
                          0220  
                          0227  
                          0227-1 through 0227-4  
                          0228-72  
                          0231  
                          0232  
                          0234  
                          0234-1 through 0234-3

Tax Map No.      Parcel No.  
108                    0232

0234  
0256  
0257  
0259  
0260  
0263  
0264  
0265  
0265-1  
0265-2  
0267

Tax Map No.      Parcel No.  
113                    235  
                          0220  
                          0220-2  
                          2312  
                          2339

Tax Map No.      Parcel No.  
114                    0234

Tax Map No.      Parcel No.  
116                    2794

I.      IND II, INDUSTRIAL DISTRICT - II

Tax Map No.      Parcel No.  
128                    0879 through 0879-2

J.      IND III, INDUSTRIAL DISTRICT - III

Tax Map No.      Parcel No.  
128                    0813 and 0814  
                          086-1

Tax Map No.      Parcel No.  
134                    0814  
                          0817

K.      IND-IV, INDUSTRIAL DISTRICT - IV

Tax Map No.      Parcel No.  
122                    351 through 353

3111 through 3114  
35101

<u>Tax Map No.</u>	<u>Parcel No.</u>
128	081-1 and 081-2
	081-2-1 through 081-2-3
	081-3
	081-3-1
	081-3-1-1
	081-4
	081-4-1 and 081-4-2
	081-5 and 081-6
	081-9 and 081-10
	082 through 084
	084-1
	085 through 0810
	08268 through 08287
	3515-1 through 3515-7
	3515-9 through 3515-14

<u>Tax Map No.</u>	<u>Parcel No.</u>
134	088
	0810
	0811
	0812
	0815
	0815-1 through 0815-3
	0816
	08279
	08280

L. MFR, MULTI-FAMILY RESIDENTIAL DISTRICT

<u>Tax Map No.</u>	<u>Parcel No.</u>
123	341
	342
	344
	0546
	0546-2 through 0546-6
	0546-8 through 0546-20

<u>Tax Map No.</u>	<u>Parcel No.</u>
128	0877
	0878
	3622 through 3624

3640-1  
3640-3

M. IND-V, INDUSTRIAL V DISTRICT (Effective 2/5/99)

<u>Tax Map No.</u>	<u>Parcel No.</u>
102	0123-1 0123-3 0123-4 0125 0125-1
114	0221 0222 0223 0224 0243 0244 0245

N. MHDR, MEDIUM-HIGH DENSITY RESIDENTIAL DISTRICT

<u>Tax Map No.</u>	<u>Parcel No.</u>
113	All parcels NORTH of Kendall Pond Road not identified as being in Industrial District I.

<u>Tax Map No.</u>	<u>Parcel No.</u>
116	2792 All parcels not identified as being in Industrial-I, Central Business or Office/Medical/Business Districts

<u>Tax Map No.</u>	<u>Parcel No.</u>
122	All parcels not identified as being in General Commercial, Central Business, or Industrial-IV Districts

<u>Tax Map No.</u>	<u>Parcel No.</u>
123	331 through 335 345 through 347 0544

<u>Tax Map No.</u>	<u>Parcel No.</u>
129	371 through 372 373 373-1

373-3 through 373-5  
374 through 374-4  
375 through 379  
3710 through 3740  
3641 through 3642  
3648 through 3659  
3312 through 3314

O. MDR, MEDIUM DENSITY RESIDENTIAL DISTRICT (Amended 12/16/99)

Tax Map No. Parcel No.  
102 All parcels WEST of Interstate 93  
and  
All parcels EAST of Interstate 93 not identified as being in Industrial V  
District, Industrial I District or Office/ Research & Development District.

Tax Map No. Parcel No.  
107 All parcels EAST of Interstate 93 not identified as being in Industrial-I District  
or in the Manufactured Housing Park District.

Tax Map No. Parcel No.  
108 All parcels not identified as being in Industrial-I District, Office/Research &  
Development District, or Low Medium Density Residential District.

Tax Map No. Parcel No.  
113 All parcels SOUTH & EAST of Kendall Pond Road not identified as being in  
the Manufactured Housing Park District.

Tax Map No. Parcel No.  
114 All parcels not identified as being in Office/Research & Development  
District, Industrial V District, or Manufactured Housing Park District.

Tax Map No. Parcel No.  
115 03106 through 03108  
03108-1  
03108-2  
03108-4  
03108-6  
03108-7  
03109  
03114

Tax Map No. Parcel No.  
117 All parcels not identified as being in Office/Medical/Business District,  
General Commercial District, or Manufactured Housing Park District, or  
Low Medium Density Residential.

<u>Tax Map No.</u> 123	<u>Parcel No.</u> All parcels EAST of South Main Street not identified as being in General Commercial or Low-Medium Density Districts.
<u>Tax Map No.</u> 129	<u>Parcel No.</u> All parcels not identified as being in General Commercial or Medium-High Density Residential Districts.
<u>Tax Map No.</u> 130	<u>Parcel No.</u> 45-8 45-9 45-10 092 092-1
<u>Tax Map No.</u> 130	<u>Parcel No.</u> 092-2 3936 3937 3937-1 through 3937-3 3938 through 3942 3944 through 3953-1
<u>Tax Map No.</u> 134	<u>Parcel No.</u> All parcels not identified as being in General Commercial, Industrial-III, or Industrial-IV Districts.
<u>Tax Map No.</u> 135	<u>Parcel No.</u> All parcels not identified as being in General Commercial District.
<u>Tax Map No.</u> 136	<u>Parcel No.</u> All parcels with frontage on Beaver Lake 5669 through 5673 525 through 529 5210 through 5240-2 5241 through 5241-4 5242 through 5244 09127 09130 through 09137 09139 through 09141
<u>Tax Map No.</u> 136	<u>Parcel No.</u> 5185 5187 through 5196

5197 through 5199  
51100 through 51128

Tax Map No. Parcel No.  
140 All parcels not identified as being in Low-Medium or Low Density Residential Districts.

Tax Map No. Parcel No.  
141 0840  
0840-8 through 0840-26  
0841-3 through 0841-14  
0841-27 through 0841-39  
0853  
54112 through 54116

Tax Map No. Parcel No.  
142 127 through 129  
5619  
5619-1 through 5619-8  
5619-10  
5634 through 5639  
5640  
5641  
5643  
5644  
5646 through 5649  
5649-1  
5649-2  
5650 through 5653  
5653-1  
5654 through 5657  
5657-1  
5658 through 5668

Tax Map No. Parcel No.  
146 All parcels not identified as being in Low-Medium Density Residential District.

P. LMDR, LOW-MEDIUM DENSITY RESIDENTIAL DISTRICT (Amended 12/16/99)

Tax Map No. Parcel No.  
101 All parcels

<u>Tax Map No.</u> 102	<u>Parcel No.</u> All parcels not identified as being in Industrial I District, Industrial V District, or Office/Research & Development District.
<u>Tax Map No.</u> 103	<u>Parcel No.</u> All parcels not identified as being in Manufactured Housing Park, General Commercial, or Low Density Residential Districts.
<u>Tax Map No.</u> 107	<u>Parcel No.</u> All parcels WEST of Interstate 93
<u>Tax Map No.</u> 108	<u>Parcel No.</u> 0269
<u>Tax Map No.</u> 109	<u>Parcel No.</u> All parcels not identified as being in Low Density Residential or General Commercial Districts.
<u>Tax Map No.</u> 115	<u>Parcel No.</u> All parcels not identified as being in Medium Density Residential, General Commercial, or Office/R&D Districts.
<u>Tax Map No.</u> 117	<u>Parcel No.</u> 0554 0555 0556 0556-1 0557
<u>Tax Map No.</u> 118	<u>Parcel No.</u> All parcels not identified as being in Low Density Residential District.
<u>Tax Map No.</u> 119	<u>Parcel No.</u> 06099 06100 06104 06105

06106-1 through 06106-10  
06106-12  
06106-13  
06106-15  
06106-17  
06106-19  
06106-20  
06106-39

Tax Map No. Parcel No.  
120 0735 through 0736-2  
06106-11  
06106-14  
06106-16  
06106-18

Tax Map No. Parcel No.  
123 0558 through 0561  
0558-8  
0565 through 0566-2  
0567  
0567-1  
0572

Tax Map No. Parcel No.  
124 All parcels not identified as being in Low Density Residential District.

Tax Map No. Parcel No.  
125 All parcels not identified as being in Low Density Residential District.

Tax Map No. Parcel No.  
126 0775-1  
0775-26 through 0775-29  
0775-43 through 0775-55  
0775-55-1  
0775-55-2  
0775-56  
0775-56-1  
0775-57  
0775-57-1  
0775-58  
0775-58-1  
0775-59

Tax Map No. Parcel No.  
130 All parcels not identified as being in Medium Density Residential District.

Tax Map No.      Parcel No.  
131                    All parcels

Tax Map No.      Parcel No.  
132                    1010  
                          1011  
                          1014  
                          1015  
                          1018  
                          1020 through 1020-21  
                          1027 through 1032  
                          1048-1

Tax Map No.      Parcel No.  
136                    09128  
                          09129  
                          09138  
                          09142 through 09142-2  
                          0910  
                          0915  
                          0915-12  
                          0941  
                          0942

Tax Map No.      Parcel No.  
137                    All parcels not identified as being in Low Density Residential District.

Tax Map No.      Parcel No.  
140                    5964 through 5967  
                          1171-11 through 1171-20

Tax Map No.      Parcel No.  
146                    1158  
                          1159  
                          1170 through 1170-11  
                          1171-9  
                          1171-10  
                          1414  
                          1415  
                          1416-29 through 1416-33

Tax Map No.      Parcel No.  
150                    All parcels

<u>Tax Map No.</u>	<u>Parcel No.</u>
151	1415
	1416-9 through 1416-18
	1416-20 through 1416-33
	1420
	1421
	1431-28 through 1431-45

Q. LDR, LOW DENSITY RESIDENTIAL DISTRICT

<u>Tax Map No.</u>	<u>Parcel No.</u>
104	All parcels not identified as being in General Commercial or Office/Research & Development Districts.
<u>Tax Map No.</u>	<u>Parcel No.</u>
105	All parcels not identified as being in General Commercial or Office/Research & Development Districts.
<u>Tax Map No.</u>	<u>Parcel No.</u>
106	All parcels not identified as being in General Commercial or Office/Research & Development Districts.
<u>Tax Map No.</u>	<u>Parcel No.</u>
109	0374
	03150
	03150-1 through 03150-9
	03151
	03152
	03135 through 03139
	03139-1
	03139-2
	03139-4
	03139-7 through 03139-11
	03139-11-1
	03139-12
	03170
<u>Tax Map No.</u>	<u>Parcel No.</u>
110	All parcels
<u>Tax Map No.</u>	<u>Parcel No.</u>
111	All parcels

<u>Tax Map No.</u> 112	<u>Parcel No.</u> All parcels
<u>Tax Map No.</u> 118	<u>Parcel No.</u> 620 0647 0649 0649-1 0649-2 0664 0668
<u>Tax Map No.</u> 119	<u>Parcel No.</u> All parcels not identified as being in Low-Medium Density Residential District.
<u>Tax Map No.</u> 120	<u>Parcel No.</u> All parcels not identified as being in Low-Medium Density Residential District.
<u>Tax Map No.</u> 121	<u>Parcel No.</u> All parcels
<u>Tax Map No.</u> 124	<u>Parcel No.</u> 0664 0667 0667-1 through 0667-3 0669 0671 through 0673 0682 0682-1 0684 0684-1 0685
<u>Tax Map No.</u> 125	<u>Parcel No.</u> 0687 0687-1 0687-2
<u>Tax Map No.</u> 126	<u>Parcel No.</u> All parcels not identified as being in Low-Medium Density Residential District.
<u>Tax Map No.</u> 127	<u>Parcel No.</u> All parcels

<u>Tax Map No.</u> 132	<u>Parcel No.</u> All parcels not identified as being in Low-Medium Density Residential District.
<u>Tax Map No.</u> 133	<u>Parcel No.</u> All parcels
<u>Tax Map No.</u> 136	<u>Parcel No.</u> 0949 0949-1 through 0949-13 0950 0951 0951-1 0952 through 0955 0946 through 0946-8 0947
<u>Tax Map No.</u> 137	<u>Parcel No.</u> 108 through 108-4 0962 through 0966-2 0958 through 0958-7 0959-1 through 0959-17-1 0960 through 0960-8 0961 through 0961-2 134 through 134-7
<u>Tax Map No.</u> 138	<u>Parcel No.</u> All parcels
<u>Tax Map No.</u> 139	<u>Parcel No.</u> All parcels
<u>Tax Map No.</u> 140	<u>Parcel No.</u> 1166 1168-11 1168-12 1168-13 1169-3
<u>Tax Map No.</u> 141	<u>Parcel No.</u> All parcels not identified as being in Medium Density Residential District.

<u>Tax Map No.</u> 142	<u>Parcel No.</u> All parcels not identified as being in Medium Density Residential District.
<u>Tax Map No.</u> 143	<u>Parcel No.</u> All parcels
<u>Tax Map No.</u> 144	<u>Parcel No.</u> All parcels
<u>Tax Map No.</u> 145	<u>Parcel No.</u> All parcels
<u>Tax Map No.</u> 147	<u>Parcel No.</u> All parcels
<u>Tax Map No.</u> 148	<u>Parcel No.</u> All parcels
<u>Tax Map No.</u> 149	<u>Parcel No.</u> All parcels
<u>Tax Map No.</u> 151	<u>Parcel No.</u> All parcels not identified as being in Low-Medium Density Residential District
<u>Tax Map No.</u> 152	<u>Parcel No.</u> All parcels

Section 601 - GENERAL COMMERCIAL DISTRICT (GC)

601.1 - Permitted Uses

The following types of uses shall be permitted:

- A. Single family detached dwellings, rooming houses, hotels, manufactured housing subdivisions (subject to the provisions of part 615.4 of this Ordinance), and inns. No other residential structures shall be permitted.
- B. All stores intended for the retail sale of such commodities as:
  - 1. antiques
  - 2. appliances and supplies
  - 3. art goods
  - 4. automobiles
  - 5. bakery products
  - 6. bicycles and their accessories
  - 7. books, stationery and greeting cards
  - 8. boots and shoes
  - 9. cameras and photographic supplies
  - 10. candy and confections
  - 11. chemical supplies
  - 12. cigars, cigarettes, tobacco and smoking supplies
  - 13. clothing and wearing apparel
  - 14. crockery
  - 15. dairy products
  - 16. drugs and medicines
  - 17. dry goods
  - 18. electrical equipment
  - 19. feed, grain and seeds
  - 20. flowers and plants
  - 21. fruit and vegetables
  - 22. furniture and household furnishings
  - 23. hardware
  - 24. heating supplies and appliances
  - 25. ice cream and soft drinks
  - 26. jewelry, watches and clocks
  - 27. kitchenware
  - 28. leather, leather goods and luggage
  - 29. meat and fish
  - 30. miscellaneous grocery items
  - 31. miscellaneous food products
  - 32. motorcycles and their accessories

- 33. music and musical instruments
- 34. newspapers and magazines
- 35. novelties and variety goods
- 36. office equipment and supplies
- 37. optical goods
- 38. paint, wallpaper and painters' and decorators' supplies
- 39. pets such as dogs, cats and birds
- 40. pharmaceutical supplies including drugs and medicines
- 41. plumbing fixtures and supplies
- 42. radios and phonographs and their supplies
- 43. sporting goods
- 44. the sale of gasoline

C. Offices or stores for the handling of sales and/or services such as:

- 1. banks and other financial institutions
- 2. barber shops and beauty parlors
- 3. boot and shoe repair
- 4. book lending
- 5. bus depots or the sale of travel accommodations
- 6. catering
- 7. clinic
- 8. coal, wood or heating materials not stored on the premises
- 9. day care for children
- 10. electrical power, water or illuminating gas
- 11. express offices
- 12. garages for storage, sales, repairs and maintenance of motorcycles, automobiles, trucks and tractors
- 13. hat cleaning
- 14. home occupations
- 15. lumber or building products not stored on the premises
- 16. moving picture houses or other type of theater
- 17. moving company offices
- 18. public or private educational services
- 19. real estate and insurance offices
- 20. restaurants, cafes, cafeterias, lunch rooms and the retail sale of any goods normally associated with such establishments
- 21. sign painting

D. Offices for the handling of administrative functions

E. The manufacture or processing of the following goods and products:

- 1. artificial flowers
- 2. bakeries
- 3. chemical manufacturing associated with retail sale of drugs and medicines
- 4. clothing or wearing apparel and their accessories, except boots and shoes
- 5. dental and orthopedic appliances and supplies
- 6. engraving, grinding and repair of optical products
- 7. packaging of feed, grain and seeds when accessory to the retail sales

8. printing and book publishing and binding
9. repair of watches and clocks and other small articles and appliances
10. repair of household furnishings

F. Miscellaneous uses such as:

1. athletic clubs or gyms
2. billiard parlors and pool halls
3. bowling alleys
4. dance halls or auditoriums used primarily for entertainment or recreation
5. exhibition halls
6. radio broadcasting and receiving stations
7. skating rinks
8. swimming pools

G. Any public use or use by a semi-public agency whose activities are primarily non-profit in nature.

H. LIGHT INDUSTRY - The assembly, manufacture, processing or other industrial operations conducted in such a manner that all resulting cinders, dust, fumes, gas, odors, smoke, vapor and waste or emissions are effectively confined to the premises or disposed of so as to avoid any environmental pollution, and conducted in such a manner that the noise level at the property line will not exceed 80 decibels, and flashing and vibration shall not be perceptible off-site.

I. No use described in Section 601.1, A through H, shall be construed or interpreted to allow sexually oriented businesses in the General Commercial District except as provided in Section 601.4. (Effective 1/1/99)

601.2 - Area and Dimensional Requirements

A. Minimum Lot Area	With public sewer; thirty thousand (30,000) square feet Without public sewer; one (1) acre, plus ten thousand (10,000) square feet for each two hundred (200) gallons per day of sewage effluent after the first 200 gallons per day, unless the owner can show adequate plans for sewage disposal on a smaller lot.
B. Minimum Lot Width	One hundred and twenty-five (125') feet at the thirty-five (35') foot front setback line.
C. Minimum Yard Depths	Front yard, thirty-five (35') feet; Side and Rear yards, twenty (20') feet.

### 601.3 - Buffer Zones

Buffer zones shall be established in accordance with the provisions of the Town of Derry Land Development and Control Regulations.

601.4 - Sexually Oriented Businesses are permitted in the General Commercial District. Sexually oriented business shall comply with and shall satisfy all restrictions in Section 322.

601.5 - Wireless Communications Facilities are a prohibited use in the General Commercial District.

## Section 602 - CENTRAL BUSINESS DISTRICT (CBD)

### 602.1 - Permitted Uses

The following uses shall be permitted:

- A. All uses allowed in Article 600, Section 601.1 A through H, provided, however, sexually oriented businesses and Wireless Communications Facilities are prohibited in the Central Business District.
- B. Multi-family dwellings, subject to the following limitations:
  1. New construction - the density shall not exceed eighteen (18) dwelling units per acre.
  2. Conversions - Existing structures may be converted for multi-family use, at a density not to exceed eighteen (18) dwelling units per acre, provided that the lot and the structure meet the minimum standards for this district with respect to area and dimensional requirements, buffer zones, off-street parking, and height limitation.

Any conversion which involves an existing nonresidential or multi-family use, or one which would result in the creation of a combination of nonresidential and residential use or which would result in the creation of a multi-family dwelling, shall be subject to review and approval in accordance with the Town of Derry Land Development Control Regulations (LDCR).

3. Multi-family dwelling structures shall not exceed sixty (60') feet in height.

### 602.2 - Area and Dimensional Requirements

The area and dimensional requirements shall be the same as specified in Section 601.2.

### 602.3 - Buffer Zones

Buffer zones shall be established in accordance with the provisions of the Town of Derry Land Development and Control Regulations (LDCR).

### Section 603 - OFFICE/BUSINESS DISTRICT (OBD)

#### 603.1 - Purpose

The Office/Business District is established for the purpose of permitting appropriate uses to occur within an area of the community where the predominant character has been, and will possibly continue to be, subject to change as a result of the growth which has affected the Town as a whole, and as a result of the influence exerted by the increased traffic volume on West Broadway. It is intended that the types of land use activities which would be allowed within this district should not greatly aggravate an already serious traffic problem on West Broadway, nor should they have a severe detrimental impact on the existing residential uses which may continue to be maintained in the district.

For these reasons, certain prohibitions, restrictions, limitations, and requirements are deemed to be necessary and appropriate.

#### 603.2 - Permitted Uses

Land use activities permitted within this district shall be limited to the following, and further, shall be subject to such other limitations as are specified herein:

- A. Business and professional offices such as those for doctors, dentists and real estate;
- B. Single family detached dwellings;
- C. Single family detached dwellings containing a maximum of one (1) business or professional office of the type described herein;
- D. Offices to handle the sale of products and services where such products and services are not available on the premises; and
- E. Those uses allowed pursuant to Part 603.4.

#### 603.3 - Prohibited Uses

Land use activities which are specifically prohibited within this district include, but are not necessarily limited to, the following:

- A. Grocery and convenience stores;
- B. Drug Stores;
- C. Restaurants;
- D. Fast food sales;

- E. Day care services;
- F. Gasoline stations;
- G. Sales, repair and/or service facilities intended principally for motor vehicles;
- H. Video rentals;
- I. Other retail businesses except as allowed in Part 603.4;
- J. Sexually oriented businesses as set forth in Article 300, Section 322; and
- K. Wireless Communications Facilities
- L. Other uses which, in the opinion of the Planning Board, would likely have an adverse impact on the character of the district or on West Broadway traffic conditions and traffic safety.

#### 603.4 - Other Allowable Use

Retail business uses may be allowed provided that the floor area devoted to such use does not exceed three hundred (300) square feet, and that a minimum of two (2) off-street spaces are provided for customer parking, and as required pursuant to Part 603.7.

#### 603.5 - Limitations

The following limitations shall apply to the conversion of existing residential structures, and to the construction of new nonresidential structures within this district:

- A. Conversion of Existing Structures - Existing residential structures may be converted to a permitted nonresidential use provided that:
  - 1. The total of the floor area to be devoted to the nonresidential use shall not exceed the aggregate of the living floor space of the dwelling unit. For the purpose of this limitation, the term "living floor space" shall not include basement, cellar, attic, or storage areas;
  - 2. The footprint of the existing structure shall not be enlarged or modified; and
  - 3. The exterior architecture of the existing structure shall not be modified to the extent that the structure no longer retains a residential appearance.
- B. New Construction - If an existing residential structure is removed, in whole or in part, or if a vacant parcel is developed for the purpose of establishing a permitted nonresidential use, the following requirements shall apply:
  - 1. The non-residential use shall comply with the following lot area, dimensional, and yard requirements:
    - a. Minimum Lot Area -10,000 square feet;
    - b. Minimum Lot Width-100 feet at the street line;
    - c. Minimum Building Setbacks:
      - front yard, 35 feet from the edge of the street R.O.W.;
      - side and rear yards, 15 feet each from the property line.

2. New structures shall be designed and constructed so that their architectural appearance, scale, proportion and material will blend with the existing residential character of the district. Consideration should be given to each of the following:

- a. the height, bulk and area of the structure;
- b. the type and the pitch of the roof;
- c. the size and the spacing of the windows, doors and other openings;
- d. the size, type and location of towers, chimneys and roof structures; and
- e. the exterior colors and materials.

#### 603.6 - Plan Review

Any change from a residential to a nonresidential use of a lot or structure, whether in whole or in part, or the development or change or expansion of the use of a lot or structure for nonresidential uses shall be subject to review and approval by the Planning Board in accordance with the Town of Derry Land Development Control Regulations, whether or not such development, change or expansion includes a subdivision or resubdivision of the site.

#### 603.7 - Off-Street Parking

- A. Residential Use - Off-street parking shall be provided on the basis of one (1) space per bedroom, with a minimum of three (3) spaces being required per dwelling unit.
- B. Nonresidential Use - Off-street parking shall be provided in accordance with the Town of Derry Land Development Control Regulations.
- C. All off-street parking areas shall be provided in such a way that no vehicle will be required or will be likely to back into the street or into the lot.
- D. No off-street parking will be allowed on the lot any closer than twenty-five (25) feet from the street R.O.W. line.
- E. No parking will be allowed within the designated buffer zone.

#### 603.8 - Buffer Zone

Where a nonresidential use in this district abuts a residential use in this district, or abuts a residential district, a buffer zone shall be established to help diminish the effects of the nonresidential use on the abutting residential use or residential district. The characteristics of the buffer zone shall be as follows:

- A. It shall have a minimum width of ten (10) feet, being parallel to and running the entire length of the nonresidential use property line, or as required by the Planning Board.
- B. It shall be planted with a single row of evergreen type trees or shrubs which, at the time of planting, shall have a minimum height of six (6) feet. Said trees or shrubs shall also be maintained at a height of at least six (6) feet.
- C. The spacing of said trees or shrubs shall be such that they will create a dense screening at the time of planting.

### 603.9 - Maximum Lot Coverage

Lot coverage by principal and accessory uses, structures and buildings, including parking areas, shall, in the aggregate, not exceed seventy (70) percent of the lot area.

### 603.10 - Curb Cut

There shall be allowed only one (1) curb cut per lot on West Broadway. Said curb cut shall not exceed twenty (20) feet in width.

### 603.11 - Conforming and Nonconforming Lots and Structures, and Nonconforming Uses

- A. All existing lots within this district, having structures thereon, shall be considered to be legally conforming lots until such time as the structures are either removed or damaged by storm or fire to the extent that the replacement or repair cost exceeds fifty (50%) percent of the original structure's assessed valuation; then such lots shall be considered to be nonconforming lots unless they meet the lot area and frontage requirements cited in Part 603.5.B.1. of this Section.
- B. Existing nonconforming structures may continue to be used for legally permitted purposes until such time as they are either removed or damaged as described in subpart A of this Part 603.11; then such structures may only be replaced in accordance with the requirements of this Section 603, other pertinent provisions of this Ordinance, and in accordance with the (Land Development Control Regulations (LDCR)).
- C. Existing nonconforming structures and nonconforming lots and uses shall not be rendered more nonconforming.
- D. All existing nonconforming uses which legally existed on August 2, 1991 may continue until such time as they are discontinued for a period of twelve (12) consecutive months; then they may be replaced only by a permitted use.

### 603.12 - Signs

Signs shall be permitted in this district in accordance with the provisions of Article 1100 of this Ordinance, subject to further compliance with the following additional limitations:

- A. There shall be allowed only one (1) sign per lot
- B. The surface area, as defined in Article 200, Section 202 of this Ordinance, shall not exceed ten (10) square feet.
- C. The sign shall not be internally illuminated and shall not utilize internally illuminated lettering.
- D. The sign shall be set back on the lot a distance of at least ten (10') feet from the nearest edge of the roadway pavement.

### 603.13 - Conflicting Provisions

Where the provisions of this Section 603 conflict with any other provision of this Ordinance or the Land Development Control Regulations, the more restrictive provision shall take precedence.

## Section 604 - OFFICE/MEDICAL/BUSINESS DISTRICT (OMB)

### 604.1 - Purpose

The Office/Medical/Business District is established for the purpose of encouraging appropriate uses to occur within an area of the community where the predominant character has been, and will continue to be, influenced by Parkland Medical Center and ancillary health-care related uses. It is intended that the types of land use activities which would be allowed within this district will not have a severe detrimental impact on the existing residential uses which may continue to be maintained in the district.

For these reasons, certain prohibitions, restrictions, limitations, and requirements are deemed to be necessary and appropriate.

### 604.2 - Permitted Uses

Land use activities permitted within this district shall be limited to the following, and further, shall be subject to such other limitations as are specified herein:

- A. Business and professional offices such as those for doctors, dentists and related health care facilities.
- B. Single family detached dwellings;
- C. Single family detached dwellings containing a maximum of one (1) business or professional office of the type described herein;
- D. Those uses allowed pursuant to Section 601.1B through G.
- E. Wireless Communications Facilities

### 604.3 - Prohibited Uses

Any use of land, building, structure, or equipment which would be injurious, noxious or offensive by way of the creation of adverse traffic impacts or conditions, odor, fumes, smoke, dust, vibration, noise or other objectionable features, or hazardous to the community on account of fire or explosion or any other cause shall be prohibited in this district.

Other land use activities which are specifically prohibited within this district include, but are not necessarily limited to, the following:

A. Sexually oriented businesses as set forth in Article 300, Section 322;

B. Uses which are not expressly permitted in Section 604.2.

604.4 - Area And Dimensional Requirements (Effective 3/18/99)

A. Minimum Lot Area - With public sewer, thirty thousand (30,000) square feet.

Without public sewer; one (1) acre, plus ten thousand (10,000) square feet for each two hundred (200) gallons per day of sewage effluent after the first 200 gallons per day, unless the owner can show adequate plans for sewage disposal on a smaller lot.

B. Minimum Lot Width - One hundred and twenty five (125') feet at the thirty-five (35') foot front setback line.

C. Minimum Yard Depths - Front yard, thirty-five (35') feet.

Side and rear yards, twenty (20') feet.

Section 605 - OFFICE/RESEARCH & DEVELOPMENT DISTRICT (ORD)

605.1 - Purpose

The Office/Research & Development District is established for the purpose of encouraging particular nonresidential uses to occur within areas of the community. It is intended that the types of land use activities which would be allowed within this district will not have a severe detrimental impact on the existing residential uses which may continue to be maintained in the district.

For these reasons, certain prohibitions, restrictions, limitations, and requirements are deemed to be necessary and appropriate. All development proposals shall be subject to review and approval by the Planning Board in accordance with the Town of Derry Land Development Control Regulations.

605.2 - Permitted Uses

Land use activities permitted within this district shall be limited to the following, and further, shall be subject to such other limitations as are specified herein:

A. Business, professional, administrative or headquarters offices

B. Research, experimental or testing laboratories,  
excluding animal experimentation and pharmaceutical

C. Medical and dental laboratories.

D. Animal hospital, veterinary clinics

E. Research and Development facilities

F. Existing residential uses as of the date of adoption of this section.

G. Wireless Communications Facilities

#### 605.3 - Prohibited Uses

Any use of land, building, structure, or equipment which would be injurious, noxious or offensive by way of the creation of adverse traffic impacts or conditions, odor, fumes, smoke, dust, vibration, noise or other objectionable features, or hazardous to the community on account of fire or explosion or any other cause shall be prohibited in this district.

Other land use activities which are specifically prohibited within this district include, but are not necessarily limited to, the following:

- A. Grocery and convenience stores;
- B. Gasoline stations;
- C. Sales, repair and/or service facilities intended principally for motor vehicles;
- D. Fast food sales
- E. Video rentals;
- F. Other retail businesses
- G. Sexually oriented businesses as set forth in Article 300, Section 322.

#### 605.4 - Buffer Zones

Buffer zones shall be established in accordance with the provisions of Article 300, Section 318.

#### 605.5 - Area And Dimensional Requirements (Effective 3/18/99)

- A. Minimum Lot Area      The minimum lot area required shall be three (3) acres, or larger, as shall be determined by the "soils based lot size determination" provisions of the town of Derry Land Development Control Regulations (LDCR).
- B. Minimum Lot Width      Two Hundred (200) feet at the thirty (30') foot setback.
- C. Minimum Yard Depths      Front yard, thirty (30') feet.  
Side and rear yards, twenty (20') feet.

## Section 606 - NEIGHBORHOOD COMMERCIAL DISTRICTS (NC)

### 606.1 - Objectives and Characteristics

It is the intent of the Town of Derry to create zoning districts within the town to be known as Neighborhood Commercial or "NC" districts. An NC district is intended to provide an opportunity for the development of limited retail sales and service facilities in the proximity of residential neighborhoods, thus minimizing unnecessary traffic congestion in the major shopping areas within the town as well as helping to reduce national fuel consumption. It is intended that any such facilities will be designed to blend harmoniously with the residential areas in which they are located and will be spaced such that they will afford convenience to the neighborhoods in which they are located, but will not create substantial or continuous commercial districts.

### 606.2 - Location of NC Districts

NC districts are intended to be "floating" districts and may be located anywhere within Residential District or the General Residence District provided that they meet the following criteria:

- A. No NC district (or portion thereof) shall be located within one and one-half (1 1/2) miles (horizontal straight-line measure) from:
  1. any other NC district;
  2. any business or industrial district within the town (within which NC district uses are permitted); or
  3. the nearest boundary of a parcel of property on which any other existing "convenience" store which regularly sells milk, bread, eggs, soda or newspapers is located within the town; and
- B. The Planning Board has approved and filed a plat in the Registry of Deeds, designated as an NC district, based upon the requirements of this Ordinance as well as those of the Town of Derry Land Development Control and other applicable regulations; and
- C. The Code Enforcement Officer (CEO) has not filed a "Notice of Termination of NC District" in accordance with the provisions entitled "Duration of NC Districts" as set forth below.

In the event that more than one applicant submits an application for establishment of an NC district, which if approved would conflict with Part A above, the first application received by the Planning Board which contains complete and correct data, information, permits and approvals shall take precedence.

### 606.3 - Size of NC Districts

An NC district shall be the same size as, and coincident with, a single lot (parcel) which conforms with the minimum lot size requirements for residential lots in the underlying (surrounding) district (including, where applicable, lot size by soil type).

### 606.4 - Duration of NC Districts

An NC district shall continue to exist as long as it is in compliance with the provisions of this Ordinance including, but not limited to, the provisions related to hours of operation. A period of one year following Planning Board approval and recording of a plat is allowed for the construction and commencement of operation of the facilities, as evidenced by the issuance of a Certificate of Occupancy, failing which the CEO shall issue a "Notice of Termination of NC District" which shall be filed in the Registry of Deeds. The one-year period may be extended by, and following application to, the CEO for a reasonable additional period of time, provided that the applicant has diligently pursued and has, in good faith, attempted to complete construction within such time period.

In the event that an NC district (or the activities permitted therein) fails to comply with the requirements of this Ordinance, in any way, for an aggregate period of 90 days in any 12 month period, the CEO of the Town of Derry shall revoke the Certificate of Occupancy for all facilities and operations within the NC district. Within thirty (30) days following the final outcome of any permitted appeals of the decision of the CEO which result in the decision being sustained, the CEO shall issue a "Notice of Termination of NC District," which shall be filed in the Registry of Deeds.

The duration of the NC district shall not be adversely affected by the expansion of an industrial or business district subsequent to the approval and recording of an NC district plat.

### 606.5 - Permitted Uses Within an NC District

Only the following uses shall be permitted within an NC district:

- A. The retail sale of grocery and sundry items including, as a minimum, milk, bread, eggs, soda and newspapers as customarily found in a "convenience" store. No sale for on-premises consumption is permitted. (Sale of coffee and doughnuts for off premises consumption is permitted.)
- B. The retail rental of audio or video tapes or discs as a secondary use to Part A above. Such secondary use shall not occupy more than twenty-five (25) percent of the usable floor area of the building.

#### 606.6 - Prohibited Uses Within an NC District

- A. Any use or activity not expressly permitted above.
- B. Outside storage or display of goods or merchandise.
- C. Sale of motor fuels.
- D. Portable or temporary signs.
- E. On-premises video games, or equivalent, are specifically prohibited.
- F. Sexually oriented businesses are prohibited within the Neighborhood Commercial District.
- G. Wireless Communications Facilities

#### 606.7 - Limitations

- A. Hours of Operation: The retail sale of groceries and sundries shall be conducted on a regular and continuing basis for a minimum of eighty (80) hours per week between the hours of 6:00 a.m. and 10:00 p.m. only. No operation shall be permitted between the hours of 10:00 p.m. and 6:00 a.m..
- B. Building: Only one building shall be located within an NC district, and such building shall be used exclusively for the permitted uses.
- C. Signs: Only one free standing sign shall be permitted within an NC district. Such sign shall be for facility name and address identification only and shall not contain any product or other advertising information. Such sign shall have a maximum surface area of ten (10) square feet on each of two sides. The maximum height of the sign above grade shall be eight (8) feet and shall be located a minimum of ten (10') feet from all property lines of the parcel. The sign shall not be internally illuminated and internally illuminated lettering shall not be utilized. In addition to the one free-standing sign, one flat sign attached to the surface of the building will be permitted. Such sign shall have a maximum surface area of twenty (20) square feet, shall not be internally illuminated and shall not utilize internally illuminated lettering. No other signs will be permitted in an NC district.

#### 606.8 - Area and Dimensional Requirements

- A. Minimum Lot Area: See "Size of NC Districts" above (606.3)
- B. Minimum Frontage: The NC district (lot) shall have a minimum of two hundred (200') feet of frontage on an approved street (at the front lot line, and not at the setback line), which has been designated as an arterial or collector road only, as referenced in the Transportation Plan in the 1994 Derry Master Plan.

- C. Minimum Setbacks: All buildings and parking areas and all other areas which are intended or may be used for vehicular travel (except for the access/egress point) shall be set back a minimum of fifty (50') feet from all lot lines.
- D. Lot Coverage: Not more than twenty-five (25%) percent of the lot area shall be occupied by the building, parking areas, driveway, or other improvements which reduce the green space.
- E. Height: The maximum height of any point of the building or other structures within an NC district shall not exceed twenty-five (25') feet above the lowest finished grade elevation at any point adjacent to the foundation of such building or structure.
- F. Floor Area:
  - 1. Maximum footprint/plan area of the building (including porches) shall be two thousand (2,000) square feet.
  - 2. Minimum footprint/plan area of the building shall be twelve hundred (1,200) square feet.
  - 3. The maximum perimeter of the building shall not exceed one hundred and eighty (180) square feet.
  - 4. The sales floor area shall be limited to a single level only and shall not exceed two thousand (2,000) square feet.

#### 606.9 - General Requirements

- A. The design and finish of the building and all other improvements within an NC district shall be in conformance with that of existing residential improvements within the surrounding neighborhood, as determined by the Planning Board.
- B. Exterior finishes of cinder block, cement block, fiberglass or metal shall not be permitted. Flat roofs shall not be permitted.
- C. The building constructed in the NC district shall be designed and constructed (including water supply and sewage disposal with capacity for at least three bedrooms) so as to facilitate future use as a single family residence in the event that the owner chooses to convert the building to a residence (and thus abandon the NC district) or in the event that a "Notice of Termination of NC District" is issued.
- D. Landscaped visual and acoustic buffer zones, at least twenty-five (25') feet deep, shall be provided inside, and immediately adjacent to, all lot lines except for street boundary lines. Buffer zones may be required along street boundary lines at the discretion of the Planning Board.
- E. Vehicular access to, and egress from, an NC district shall be by means of a single driveway with a width not exceeding twenty-four (24') feet.

## Section 607 - MANUFACTURED HOUSING PARK DISTRICT (MHPD)

### 607.1 - Purpose

The purpose of this district is to allow the use of manufactured housing units under conditions which are intended to enhance affordable housing opportunities.

### 607.2 - Permitted Uses

Uses permitted within this district shall be limited to single family detached manufactured housing units as defined in this Ordinance.

### 607.3 - Minimum Tract Area

A manufactured housing park site shall consist of at least fifteen (15) acres.

### 607.4 - General Provisions

- A. Regulatory Floodway - Except in existing manufactured housing parks, the placement of manufactured homes is prohibited within the regulatory floodway as designated on the Flood Boundary and Floodway maps of the Town of Derry bearing the effective date of April 15, 1981.
- B. Suitability of Site - No manufactured housing park shall be located as to be:
  1. inaccessible from a town- or state-maintained road;
  2. on poorly drained land or land that is unsuitable for septic tank disposal of sewage in those cases where access to and connection with the municipal sewerage system is unavailable;
  3. on land subject to flooding, erosion or other hazard; or
  4. on land that is exposed to chronic nuisances such as, but not limited to, noise, smoke, dust, fumes, and/or odors. The developer shall establish, to the satisfaction of the Planning Board, that land proposed for a manufactured housing park is suitable for such development.
- C. License Required - No manufactured housing park, whether newly constructed or currently existing, shall be operated after the effective date of this Ordinance until it shall first have been licensed by the Code Enforcement Officer.
  1. Application for a license shall be made annually and shall show the name and address of the owner of the park, the number of units within the park, the names and addresses of the unit owners, and the number of vacant spaces within the park.

2. The first such application shall be accompanied by a plan of the park, drawn to scale, showing the location of the interior streets, the individual unit spaces, drainage, sanitary and water facilities, and electric, telephone and gas utilities.
3. All renewal applications shall be accompanied by information as to any changes in the original plan or other park information. At the discretion of the Code Enforcement Officer, a new plan may be required if the changes are numerous.

D. Inspection Required - No original or renewal license shall be issued until a completed application has been submitted, as required herein, and until after the park has been inspected to determine that it meets all necessary health and safety requirements of this Ordinance.

E. Existing Parks - Existing manufactured housing parks may not be expanded or altered except in conformance with the provisions of this Ordinance.

F. Fees - Licensing and renewal fees shall be established by the Town Council.

G. Unoccupied Units - No unoccupied manufactured home shall be stored or exhibited for sale for commercial purposes within the manufactured housing park.

H. Hygiene and Sanitation - Every manufactured home shall be provided with adequate hygiene and sanitation facilities. Water supply, water service, plumbing, sewage disposal and treatment, electric power service, bottled or piped gas service, heating equipment and fuels, refuse and garbage storage and disposal, and insect and rodent control shall be provided in full compliance with all pertinent state and local health regulations and requirements.

#### 607.5 - Design Standards

After the effective date of this Ordinance, all new manufactured housing parks, and the expansion and alteration of existing parks, shall be subject to the following minimum design standards, compliance with which shall be determined by the Planning Board under the Town of Derry Land Development Control Regulations.

A. Standards for Parks

1. Interior roads shall have a minimum right-of-way width of fifty (50') feet, centered within which there shall be a paved travel way having a minimum width of twenty-four (24') feet. Interior roads shall be constructed in accordance with the requirements for minor streets as specified in the "Table of Geometric and Other Standards for Streets" contained in the Town of Derry Land Development Control Regulations (LDCR)
2. Interior roadways shall be adequately illuminated at night, and shall be identified by signs of a design approved by the Public Works Director.

3. At least ten (10%) percent of the total park area, exclusive of the interior access roads, unit spaces, and utility and service areas, shall be reserved for recreation and open space purposes for the exclusive use of the residents thereof. Recreation areas shall be enclosed by appropriate fencing to protect children from streets and parking areas.

Land designated for recreation and open space purposes shall be approved by the Planning Board as being suitable for the intended use.

4. A buffer zone which complies with the provisions of the Town of Land Development Control Regulations (LDCR) shall be established around the park perimeter.
5. Water, sewer and underground utility lines that run under interior access roads shall be sleeved to the satisfaction of the Public Works Director.
6. If the park is to be connected to the municipal water system, the service connection to said system shall be a minimum of six (6) inches in diameter, and there shall be connected therewith fire hydrants of a number and at such locations within the park as are to be determined by the Derry Fire Department.
7. Each park shall have a minimum of one (1) access on a public right-of-way. The width of said access shall be at least fifty (50') feet.

#### B. Space Standards

1. Each space shall be a minimum of 7,200 square feet in area, shall be at least sixty (60') feet wide by at least one hundred and twenty (120') feet in depth, and shall front upon an interior access road. The bounds of each space shall be clearly marked.
2. Each space shall include provision for at least two (2) off-street parking spaces, each at least ten (10') feet wide by twenty-two feet long, having an all-weather surface area.
3. Each manufactured housing space shall be provided with a four-inch thick reinforced concrete pad, the length and width of which shall be sized to accommodate the dimensions of the manufactured housing unit to be placed thereon.
4. Each space shall be provided with an all-weather walkway.
5. Each space shall have an attachment for water supply, the source and distribution system of which meet all state and local regulations.
6. Each space shall be provided with a connection to an adequate central sewage disposal system which shall meet all state and local regulations.

If a centralized subsurface disposal system is used, the septic tank and leach field shall not be located on any manufactured housing space, but shall be located on a separate lot of sufficient size to accommodate the ultimate capacity of the park.

If each manufactured housing space is to be served on-site by an individual subsurface disposal system, the space being served shall be at least one (1) acre in area.

Separate lots containing subsurface disposal systems shall not be considered part of the required open space and recreation area.

7. Each space shall be properly graded and drained to assure the adequate disposal of surface and storm water.
8. Each space shall be provided with a storage building having at least one hundred (100) square feet of floor area.
9. All buildings on the space shall be at least twenty (20') feet apart.
10. Each space shall be provided with an electrical source supplying at least 100 amps, 120/240 volts. The installation shall comply with all applicable state and local electrical codes.
11. Each space shall be provided with a light post at the street end of the driveway, to which the street number of the space shall be attached in such manner as to be adequately illuminated and visible to emergency services personnel.
12. Each space shall be provided with a substantial fly-tight receptacle from which all garbage and refuse shall be removed and disposed of by the park owner not less frequently than once weekly.

#### C. Manufactured Housing Construction and Placement Standards

1. All manufactured housing units placed within a manufactured housing park, whether a new or an existing park, after the effective date of this Ordinance shall be certified as being constructed in accordance with the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974.
2. No manufactured housing unit shall be placed closer than fifty (50) feet to a public street right-of-way line.
3. A manufactured housing unit, including any attachment thereto, such as a carport, and all accessory buildings, shall be located on the space so that the unit and all accessory buildings are at least thirty (30') feet from the edge of the right-of-way of the interior access road, and twenty (20') feet from any lot line of the space.

D. Open Space and Improvements Maintenance Assurance

1. In the event that the owner of the park, or any successor owners shall, for any reason, fail to maintain the common area(s) and improvements in reasonable order and condition in accordance with the approved plan, the Code Enforcement Officer shall serve written notice upon the owner, or his heirs and assigns, setting forth the deficiencies in the maintenance, order and condition of the common area(s) and/or improvements.
2. Such notice shall include a demand that said deficiencies be cured forthwith and that a statement of intent to comply, and a date of compliance, shall be filed with the Code Enforcement Officer within fourteen (14) days of said notice, unless it pertains to safety or health, in which case the Code Enforcement Officer may take immediate action.
3. If such maintenance shall not have been performed, or if said statement of intent shall not have been filed by the stated time, the Town, in order to preserve the taxable values of the properties within the park, and to prevent nuisance, safety or health risks, may enter upon the common area(s) and/or improvements and maintain such area(s) and/or improvements for a period not to exceed one (1) year. Said entry and maintenance shall not vest any rights in the general public to the use or the enjoyment of the common area(s) and/or improvements.
4. Before the expiration of that period, the Town shall, upon its initiative, or upon the request of the owner theretofore responsible for the maintenance, call a public hearing to be held by the Town Council. Notice of said hearing shall be given to the owner of the park.
5. At the hearing, the owner of the park shall show cause why such maintenance by the Town shall not, at the election of the Town, continue for a succeeding year or other designated period.
6. If the Town Council shall determine that the owner is not ready and able to maintain said common area(s) and/or improvements in a reasonable condition, the Town may, in its discretion, continue to maintain said area(s) and/or improvements during the next succeeding year and, subject to a similar hearing and determination, during each succeeding year thereafter. The decision of the Town Council in any such case shall constitute a final administrative decision.
7. The cost of such maintenance by the Town shall be assessed against the park owner, and shall become a tax lien on said property.
8. At the time of entering upon said common area(s) and/or improvements for the purpose of maintenance, notice of such lien shall be filed in the office of the Rockingham County Registry of Deeds.

## 607.6 - Exemption

The provisions of this Section 607 shall not apply to manufactured homes in the possession of dealers as stock-in-trade for sale or resale, as long as said manufactured homes remain unoccupied, except that no such manufactured homes shall be stored in a manufactured housing park.

## Section 608 - INDUSTRIAL DISTRICT - I (IND - I)

### 608.1 - Permitted Uses

The following uses shall be permitted within the Industrial District-I:

A. The manufacture of various products including, but not limited to:

1. appliances
2. building material
3. chemicals
4. clothing
5. food
6. furniture
7. instruments
8. office supplies
9. photographic and optical products
10. plastics
11. sporting goods
12. textiles
13. transportation equipment
14. wood products

B. Other large-scale uses including, but not limited to:

1. building materials storage and sale
2. freight terminal
3. fuel and storage tanks
4. mail order storage yards
5. sand and gravel pits
6. warehouse
7. wholesale businesses

C. Agricultural and forestry uses.

D. Wireless Communications Facilities

## 608.2 - Accessory Uses

Accessory uses, buildings and structures usually associated with these permitted uses shall be allowed, including off-street parking facility, signs, and temporary buildings for uses incidental to construction.

## 608.3 - Prohibited Uses

The following uses shall be prohibited within the Industrial District-I:

- A. Any industry which produces smoke other than that which comes from normal heating and power producing purposes, subject to the limitation of Section 310 of this Ordinance.
- B. The following activities are specifically prohibited:
  - 1. acetylene gas manufacture
  - 2. ammonia, beachline powder, chlorine manufacture
  - 3. asphalt manufacturing or refining
  - 4. blast furnace
  - 5. boiler making
  - 6. brick, terra cotta or tile manufacturing
  - 7. coke manufacturing
  - 8. creosote treatment or manufacturing
  - 9. dye stuff manufacturing
  - 10. emery cloth or sandpaper manufacturing
  - 11. foundries
  - 12. manufacture of gunpowder and other explosives
  - 13. manufacturing of tar roofing or tar waterproofing
  - 14. slaughtering of animals or fowl
  - 15. smelting of ores
  - 16. stockyards
  - 17. tanning or curing of raw hides or skins, or japanning of leather
  - 18. tar distillation or manufacturing
  - 19. any business use including any sexually oriented business

## 608.4 - Area and Dimensional Requirements

- A. Minimum Lot Area -One (1) acre (43,560 square feet)
- B. Minimum Lot Width -One hundred and twenty-five (125') feet at the thirty (30') foot front setback line
- C. Minimum Yard Depths- Front yard, thirty (30') feet;  
Side and rear yards, twenty (20') feet

## 608.5 - Building Height

Building height shall be subject to the review and approval of the Planning Board.

## 608.6 - Water and Sewer Services

- A. Town water service shall be used, if available.
- B. Town sewer service shall be used if said town sewer is located within one hundred (100') feet of a property line of a parcel under consideration, as required by the Sewer Ordinance, Town of Derry, New Hampshire.
- C. All connections to the town water and sewer systems shall be made in strict conformity to the Sewer and Water ordinances, the Water Main Specifications, and the Sewer and Water Service Connection Specifications of the Town of Derry.
- D. In the event that town water and sewer services are not available, state-approved water and sewer systems shall be required.

## 608.7 - Buffer Zones

Buffer zones shall be established in accordance with the provisions of Article 300, Section 318.

## 608.8 - Off-street Parking

Off-street parking shall be provided in accordance with the provisions of the Land Development Control Regulations.

# Section 609 - INDUSTRIAL DISTRICT - II (I ND- II)

## 609.1 - District Objective

This district allows for the establishment of office and light manufacturing employment opportunities in the community and takes into consideration vehicular and truck access and the availability of municipal water and sewer.

## 609.2 - Permitted Uses

Only the following uses shall be permitted within this district:

1. manufacturing industries
2. warehouse and wholesale uses
3. professional office and appurtenant uses in buildings of greater than

4. twenty thousand (20,000) square feet
5. public utilities
6. parking garages
7. animal hospital, veterinary clinics
8. printing establishments
9. industrial supply establishments
10. hotel/motel
11. breweries and bottling facilities
12. enclosed recycling of non-hazardous materials
13. Wireless Communications Facilities

#### 609.3 - Prohibited Uses

Any industrial use of land, building, structure, or equipment which would be injurious, noxious or offensive by way of the creation of adverse traffic impacts or conditions, odor, fumes, smoke, dust, vibration, noise or other objectionable features, or hazardous to the community on account of fire or explosion or any other cause shall be prohibited in this district. Sexually oriented businesses are prohibited in this district.

#### 609.4 - Area and Dimensional Requirements

A. Minimum Lot Area - One (1) acre (43,560 square feet) when served by town sewer. If not served by the town sewer, the minimum lot area shall be one (1) acre in addition to meeting the lot size requirement specified in Table 1A, "Minimum Lot Size by Soil Type," as contained in the Town of Derry Land Development Control Regulations (LDCR)

B. Minimum Lot Width One hundred and twenty-five (125') feet at the thirty (30') foot front setback line.

C. Minimum Yard Depths Front yard, thirty (30') feet;  
Side and rear yards, twenty (20') feet.

#### 609.5 - Building Height

Building heights of up to sixty (60') feet shall be permitted, notwithstanding any other provision of this Ordinance.

#### 609.6 - Buffer Zones

Buffer zones shall be established in accordance with the provisions of Article 300, Section 318.

#### 609.7 - Off-street Parking

Off-street parking shall be provided in accordance with the provisions of the Land Development Control Regulations.

## Section 610 - INDUSTRIAL DISTRICT - III (IND - III)

### 610.1 - Permitted Uses

A. Only the following uses are permitted within Industrial District-III:

1. manufacturing industries
2. warehouse and wholesale uses
3. professional office uses in buildings of greater than ten thousand (10,000) square feet
4. public utilities
5. machinery and transportation equipment, sales, service and repair
6. freight and trucking terminals, offices and brokers
7. contractors yards
8. parking garages
9. animal hospital, veterinary clinics
10. bulk fuel storage and distribution
11. printing establishment
12. contract cleaning establishment
13. industrial supply establishment
14. hotel/motel
15. breweries and bottling facilities
16. enclosed recycling of non-hazardous materials
17. Wireless Communications Facilities

### 610.2 - Prohibited Uses

Any industrial use of land, building, structure, or equipment which would be injurious, noxious or offensive by way of the creation of adverse traffic impacts or conditions, odor, fumes, smoke, dust, vibration, noise or other objectionable features, or hazardous to the community on account of fire or explosion or any other cause shall be prohibited in this district. Sexually oriented businesses are prohibited in this district.

### 610.3 - Area and Dimensional Requirements

A. Minimum Lot Area	One (1) acre (43,560 square feet) when served by town sewer. If not served by the town sewer, the minimum lot area shall be one (1) acre in addition to meeting the lot size requirement specified in Table 1A, "Minimum Lot Size by Soil Type," as contained in the Town of Derry Land Development Control Regulations (LDCR)
B. Minimum Lot Width	One hundred and twenty-five (125') feet at the thirty (30') foot front setback line.
C. Minimum Yard Depths	Front yard, thirty (30') feet; Side and rear yards, twenty (20') feet.

#### 610.4 - Building Height

Building heights of up to one hundred (100') feet shall be permitted, notwithstanding any other provision of this Ordinance.

#### 610.5 - Buffer Zones

Buffer zones shall be established in accordance with the provisions of Article 300, Section 318.

#### 610.6 - Off-street Parking

Off-street parking shall be provided in accordance with the provisions of the Land Development Control Regulations.

### Section 611 - INDUSTRIAL DISTRICT - IV (IND - IV)

#### 611.1 - Permitted Uses

The following uses shall be permitted within the Industrial District-IV:

A. The manufacture of various products including, but not limited to:

1. appliances
2. building material
3. chemicals
4. clothing
5. food
6. furniture
7. instruments
8. office supplies
9. photographic and optical products
10. plastics
11. sporting goods
12. textiles
13. transportation equipment
14. wood products

B. Other large-scale uses including, but not limited to:

1. building materials storage and sale
2. freight terminal
3. fuel and storage tanks
4. mail order storage yards
5. sand and gravel pits
6. warehouse
7. wholesale businesses

- C. Agricultural and forestry uses
- D. Retail business
- E. Wireless Communications Facilities

#### 611.2 - Accessory Uses

Accessory uses, buildings and structures usually associated with these permitted uses shall be allowed, including off-street parking facility, signs, and temporary buildings for uses incidental to construction.

#### 611.3 - Prohibited Uses

The following uses shall be prohibited within the Industrial District-IV:

- A. Any industry which produces smoke other than that which comes from normal heating and power producing purposes, subject to the limitation of Section 310 of this Ordinance.
- B. The following activities are specifically prohibited:
  1. acetylene gas manufacture
  2. ammonia, beachline powder, chlorine manufacture
  3. asphalt manufacturing or refining
  4. blast furnace
  5. boiler making
  6. brick, terra cotta or tile manufacturing
  7. coke manufacturing
  8. creosote treatment or manufacturing
  9. dye stuff manufacturing
  10. emery cloth or sandpaper manufacturing
  11. foundries
  12. manufacture of gunpowder and other explosives
  13. manufacturing of tar roofing or tar waterproofing
  14. slaughtering of animals or fowl
  15. smelting of ores
  16. stockyards
  17. tanning or curing of raw hides or skins, or japanning of leather
  18. tar distillation or manufacturing
- C. Sexually oriented businesses are prohibited in this district.

#### 611.4 - Area and Dimensional Requirements

A. Minimum Lot Area	One (1) acre (43,560 square feet)
B. Minimum Lot Width	One hundred and twenty-five (125') feet at the thirty (30') foot front setback line
C. Minimum Yard Depths	Front yard, thirty (30') feet; Side and rear yards, twenty (20') feet

#### 611.5 - Building Height

Building height shall be subject to the review and approval of the Planning Board.

#### 611.6 - Water and Sewer Services

- A. Town water service shall be used, if available.
- B. Town sewer service shall be used if said town sewer is located within one hundred (100') feet of a property line of a parcel under consideration, as required by the Sewer Ordinance, Town of Derry, New Hampshire.
- C. All connections to the town water and sewer systems shall be made in strict conformity to the Sewer and Water ordinances, the Water Main Specifications, and the Sewer and Water Service Connection Specifications of the Town of Derry.
- D. In the event that town water and sewer services are not available, state-approved water and sewer systems shall be required.

#### 611.7 - Buffer Zones

Buffer zones shall be established in accordance with the provisions of Article 300, Section 318.

#### 611.8 - Off-street Parking

Off-street parking shall be provided in accordance with the provisions of the Land Development Control Regulations (LDCR)

## Section 612 - Residential Districts: MULTI-FAMILY RESIDENTIAL (MFR)

### 612.1 - Permitted Uses

The uses permitted within this district shall be limited to the following:

1. single family detached dwellings
2. two-family dwellings
3. multi-family dwellings
4. accessory apartments (must also comply with the provisions of Section 320)

### 612.2 - Area and Dimensional Requirements

#### A. Single family detached and two-family dwellings:

1. Minimum Lot Area
  - a. When served by municipal water or municipal sewer, the minimum lot area required shall be fifteen thousand (15,000) square feet per dwelling unit.
  - b. When served by both municipal water and municipal sewer, the minimum lot area required shall be ten thousand (10,000) square feet per dwelling unit.
  - c. When served by a community water system, the minimum lot area required shall be one (1) acre (43,560 square feet) per dwelling unit.
2. Minimum Lot Width
  - a. When served by either municipal water or municipal sewer, or by both, the minimum lot width required shall be one hundred (100') feet at the thirty-five (35') foot front setback line, or one hundred (100') feet at the front lot line.
  - b. When served by a community water system, the minimum lot width required shall be one hundred and twenty-five (125') feet at the thirty-five (35') foot front setback line, or one hundred and twenty-five (125') feet at the front lot line.
3. Minimum Yard Depths - Front yard shall be thirty-five (35') feet; Side and rear yards shall be fifteen (15') feet.

B. Multi-family Dwellings (More than two [2] units per building)

1. Minimum Lot Area - The minimum lot area required shall be three thousand six hundred and thirty (3,630) square feet per dwelling unit.
2. Minimum Lot Width - The minimum lot width required shall be one hundred and fifty (150') feet at the front lot line.
3. Minimum Yard Depths - The minimum front, side and rear yards shall be thirty (30') feet each.
4. Building Height - Multi-family dwellings shall not exceed sixty (60') feet in height.

612.3 - Additional Multi-Family Requirements

- A. The maximum length of a multi-family dwelling shall not exceed two hundred (200') feet.
- B. The minimum distance between multi-family dwellings shall not be less than thirty-five (35') feet.
- C. All multi-family dwellings shall be connected to the municipal water and the municipal sewer systems.
- D. At least fifteen (15%) percent of the gross lot area shall be provided for recreation space.
- E. Off-street parking shall be provided in accordance with the Land Development Control Regulations (LDCR)
- F. Multi-family dwellings shall be constructed in accordance with the provisions of the 1990 BOCA National Building Code, the 1990 BOCA National Plumbing Code, the 1990 National Electrical Code (National Fire Protection Association Document #70), and the 1988 Life Safety Code (National Fire Protection Association Document #101).

Section 613 - INDUSTRIAL DISTRICT-V (IND-V) (Effective 2/5/99)

613.1 - Purpose

The Industrial-V District is established for the purposes of encouraging particular non-residential uses of an industrial nature that are less intense than those uses allowed in Industrial Districts I through IV.

To carry out the purposes of this zone, certain prohibitions, restrictions, limitations and requirements are deemed to be necessary and appropriate.

## 613.2 - Permitted Uses

The following uses shall be permitted within the Industrial District-V:

A. The manufacture of various products as follows:

1. appliances
2. building material
3. clothing
4. furniture
5. instruments
6. office supplies
7. photographic and optical products
8. textiles
9. wood and metal products
10. electronic assembly and software development

B. Other uses as follows:

1. building materials storage and wholesale
2. self storage facility with ancillary truck rental use
3. warehouse

C. Agricultural and forestry uses.

## 613.3 - Accessory Uses

Accessory uses, buildings and structures usually associated with these permitted uses shall be allowed, including off-street parking facility, signs, and temporary buildings for uses incidental to construction.

## 613.4 - Prohibited Uses

Any use of land, building, structure, or equipment which would be injurious, noxious or offensive by way of the creation of adverse traffic impacts or conditions, odor, fumes, smoke, dust, vibration, noise or other objectionable features, or hazardous to the community on account of fire or explosion or any other cause shall be prohibited in this district.

Other land use activities which are specifically prohibited within this district include, but are not necessarily limited to, the following:

- A. Sexually oriented businesses as set forth in Article 300, Section 322.
- B. Uses which are not expressly permitted in Section 613.2.
- C. Wireless Communications Facilities.

### 613.5 - Area and Dimensional Requirements

A. Minimum Lot Area	One (1) acre - 43,560 square feet.
B. Minimum Lot Width	One hundred and twenty-five (125') feet at the thirty (30') foot front setback line.
C. Minimum Yard Depths	Front yard, thirty (30') feet Side and rear yards, twenty (20') feet.

### 613.6 - Building Height

Building height shall be subject to the review and approval of the Planning Board.

### 613.7 - Water and Sewer Services

- A. Town water service shall be used, if available.
- B. Town sewer service shall be used if said town sewer is located within one hundred (100') feet of a property line of a parcel under consideration, as required by the Sewer Ordinance, Town of Derry, New Hampshire.
- C. All connections to the town water and sewer systems shall be made in strict conformity to the Sewer and Water Ordinances, the Water Main Specifications, and the Sewer and Water Service Connection Specifications of the Town of Derry.
- D. In the event that town water and sewer services are not available, state approved water and sewer systems shall be required.

### 613.8 - Buffer Zones

Buffer zones shall be established in accordance with the provisions of Article 300, Section 318.

### 613.9 - Off-Street Parking

Off-street parking shall be provided in accordance with the provisions of the Land Development Control Regulations (LDCR).

## Section 614 - MEDIUM-HIGH DENSITY RESIDENTIAL DISTRICT (MHDR)

### 614.1 - Permitted Uses

The uses permitted within this district shall be limited to the following:

1. single family detached dwellings
2. two-family dwellings
3. multi-family dwellings
4. accessory apartments (must also comply with the provisions of Section 320)

### 614.2 - Area and Dimensional Requirements

#### A. Single family detached and two-family dwellings:

1. Minimum Lot Area --
  - a. When served by municipal water or municipal sewer, the minimum lot area required shall be fifteen thousand (15,000) square feet per dwelling unit.
  - b. When served by both municipal water and municipal sewer, the minimum lot area required shall be ten thousand (10,000) square feet per dwelling unit.
  - c. When served by a community water system, the minimum lot area required shall be one (1) acre (43,560 square feet) per dwelling unit.
2. Minimum Lot Width
  - a. When served by either municipal water or municipal sewer, or by both, the minimum lot area required shall be one hundred (100') feet at the thirty-five (35') foot front setback line, or one hundred (100') feet at the front lot line.
  - b. When served by a community water system, the minimum lot width required shall be one hundred and twenty-five (125') feet at the thirty-five (35') foot front setback line, or one hundred and twenty-five (125') feet at the front lot line.
3. Minimum Yard Depths - Front yard shall be thirty-five (35') feet  
Side and rear yards shall be fifteen (15') feet

B. Multi-family Dwellings

1. Minimum Lot Area - Minimum lot area required shall be three thousand six hundred and thirty (3,630) square feet per dwelling unit.
2. Minimum Lot Width - Minimum lot width required shall be one hundred and fifty (150') feet at the front lot line.
3. Minimum Yard Depths - Side and rear yards shall be thirty (30') feet each
4. Building Height - Multi-family dwellings shall not exceed sixty (60') feet in height.

614.3 - Additional Multi-Family Requirements

- A. The maximum length of a multi-family dwelling shall not exceed two hundred (200') feet.
- B. The minimum distance between multi-family dwellings shall not be less than thirty-five (35') feet.
- C. All multi-family dwellings shall be connected to the municipal water and the municipal sewer systems.
- D. At least fifteen (15') percent of the gross lot area shall be provided for recreation space.
- E. Off-street parking shall be provided in accordance with the Land Development Control Regulations (LDCR)
- F. Multi-family dwellings shall be constructed in accordance with the provisions of the 1990 BOCA National Building Code, the 1990 BOCA National Plumbing Code, the 1990 National Electrical Code (National Fire Protection Association Document #70), and the 1988 Life Safety Code (National Fire Protection Association Document #101).

Section 614 - MEDIUM-HIGH DENSITY RESIDENTIAL DISTRICT (MHDR)

614.1 - Permitted Uses

The uses permitted within this district shall be limited to the following:

1. single family detached dwellings
2. two-family dwellings
3. multi-family dwellings
4. accessory apartments (must also comply with the provisions of Section 320)

## 614.2 - Area and Dimensional Requirements

### A. Single family detached and two-family dwellings:

#### 1. Minimum Lot Area --

- a. When served by municipal water or municipal sewer, the minimum lot area required shall be fifteen thousand (15,000) square feet per dwelling unit.
- b. When served by both municipal water and municipal sewer, the minimum lot area required shall be ten thousand (10,000) square feet per dwelling unit.
- c. When served by a community water system, the minimum lot area required shall be one (1) acre (43,560 square feet) per dwelling unit.

#### 2. Minimum Lot Width

- a. When served by either municipal water or municipal sewer, or by both, the minimum lot area required shall be one hundred (100') feet at the thirty-five (35') foot front setback line, or one hundred (100') feet at the front lot line.
- b. When served by a community water system, the minimum lot width required shall be one hundred and twenty-five (125') feet at the thirty-five (35') foot front setback line, or one hundred and twenty-five (125') feet at the front lot line.

#### 3. Minimum Yard Depths - Front yard shall be thirty-five (35') feet Side and rear yards shall be fifteen (15') feet

### B. Multi-family Dwellings

1. Minimum Lot Area - Minimum lot area required shall be three thousand six hundred and thirty (3,630) square feet per dwelling unit.
2. Minimum Lot Width - Minimum lot width required shall be one hundred and fifty (150') feet at the front lot line.
3. Minimum Yard Depths - Side and rear yards shall be thirty (30') feet each
4. Building Height - Multi-family dwellings shall not exceed sixty (60') feet in height.

### 614.3 - Additional Multi-Family Requirements

- A. The maximum length of a multi-family dwelling shall not exceed two hundred (200') feet.
- B. The minimum distance between multi-family dwellings shall not be less than thirty-five (35') feet.
- C. All multi-family dwellings shall be connected to the municipal water and the municipal sewer systems.
- D. At least fifteen (15%) percent of the gross lot area shall be provided for recreation space.
- E. Off-street parking shall be provided in accordance with the Land Development Control Regulations (LDCR)
- F. Multi-family dwellings shall be constructed in accordance with the provisions of the 1990 BOCA National Building Code, the 1990 BOCA National Plumbing Code, the 1990 National Electrical Code (National Fire Protection Association Document #70), and the 1988 Life Safety Code (National Fire Protection Association Document #101).

### 614.4 - Special Exception Uses (Effective 10/7/99)

- A. A special exception may be granted by the Zoning Board of Adjustment to allow an owner-resident to conduct a home business in her/his dwelling. Such home business shall be limited to the following professions or trades:
  - 1. lawyer, doctor, clergyman, real estate agent, insurance agent, or similar recognized profession or business
  - 2. artist, artisan or craftsman
  - 3. tradesman or repairman
- B. A request for only such special exception uses as are specified in Part A above may be granted, provided that the Zoning Board of Adjustment finds favorably with respect to each of the following conditions:
  - 1. The applicant claims the dwelling unit as her/his legal residence;
  - 2. The residential use was established by the applicant prior to the filing of the request for the special exception;
  - 3. The proposed home business will not be injurious, noxious, or offensive to the neighborhood by reason of emission of odor, fumes, dust, smoke vibration, noise, or other cause;

4. The home business use will be conducted within the residential structure, or other existing structure, and will not exceed twenty-five (25%) percent of the total normal living area of the dwelling unit. For purposes of this provision, the normal living area shall be defined as that portion of the residential structure consisting of living room(s), family room(s), den(s), bedroom(s), and laundry room(s);
5. The home business use will not change the residential character of the dwelling, or the property;
6. Not more than one (1) sign or other advertising device will be displayed on the property, and it will not exceed three (3) square feet in surface area;
7. Not more than one person not residing in the dwelling unit will be employed on the premises at the same time;
8. Sufficient off-street parking will be provided for employees, clients, and customers. Where lot size permits, the parking will not be provided within twenty-five (25') feet of the front lot line, nor within ten (10') feet of a side or rear lot line;
9. Not more than one (1) home business use will be conducted on the property; and
10. The proposed home business use will not, in any way, be contrary to any covenants or conditions contained in the deed to the property.

- C. Special exceptions granted under this Section are intended for use by the current residents and, as such, shall not be transferable to subsequent occupants.
- D. Nothing in this Section 614.4 shall be construed to allow sexually oriented businesses within this district.

## Section 615 - MEDIUM DENSITY RESIDENTIAL DISTRICT (MDR)

### 615.1 - Permitted Uses

A. The uses permitted within this district shall be limited to:

1. single family detached dwellings, in the form of conventional subdivisions
2. manufactured housing subdivisions
3. accessory apartment
4. campgrounds
5. production or sale of farm produce by residents of the district
6. the production or sale of farm produce, as permitted above, shall be allowed, provided that such use is not injurious, noxious or offensive to the neighborhood
7. community-oriented recreational facilities which facilities provide guidance and promote the health, social, education, physical, vocational and character development of boys and girls, with appropriate related social gatherings, child care, appropriate fund raising events and adult programs, such as but not limited to Community Centers, Girls' Clubs, Boys' Clubs, YWCAs and YMCAs.

### 615.2 - Special Exception Uses

A. A special exception may be granted by the Zoning Board of Adjustment to allow an owner-resident to conduct a home business in her/his dwelling. Such home business shall be limited to the following professions or trades:

1. lawyer, doctor, clergyman, real estate agent, insurance agent, or similar recognized profession or business
2. artist, artisan or craftsman
3. tradesman or repairman

B. A request for only such special exception uses as are specified in part A above may be granted, provided that the Zoning Board of Adjustment finds favorably with respect to each of the following conditions:

1. The applicant claims the dwelling unit as her/his legal residence;
2. The residential use was established by the applicant prior to the filing of the request for the special exception;

3. The proposed home business will not be injurious, noxious, or offensive to the neighborhood by reason of emission of odor, fumes, dust, smoke vibration, noise, or other cause;
4. The home business use will be conducted within the residential structure, or other existing structure, and will not exceed twenty-five (25%) percent of the total normal living area of the dwelling unit. For purposes of this provision, the normal living area shall be defined as that portion of the residential structure consisting of living room(s), family room(s), den(s), bedroom(s), and laundry room(s);
5. The home business use will not change the residential character of the dwelling, or the property;
6. Not more than one (1) sign or other advertising device will be displayed on the property, and it will not exceed three (3) square feet in surface area;
7. Not more than one person not residing in the dwelling unit will be employed on the premises at the same time;
8. Sufficient off-street parking will be provided for employees, clients, and customers. Where lot size permits, the parking will not be provided within twenty-five (25') feet of the front lot line, nor within ten (10') feet of a side or rear lot line;
9. Not more than one (1) home business use will be conducted on the property; and
10. The proposed home business use will not, in any way, be contrary to any covenants or conditions contained in the deed to the property.

C. Special exceptions granted under this Section are intended for use by the current residents and, as such, shall not be transferable to subsequent occupants.

D. Nothing in this Section 615.2 shall be construed to allow sexually oriented businesses within this district.

### 615.3 - Single Family Detached Dwellings, in Conventional Subdivisions

#### A. Minimum Lot Area

The minimum lot area required shall be one (1) acre, or larger as shall be determined by the "Soils Based Lot Size Determination" provisions of the Town of Derry Land Development Control Regulations.

This requirement shall not be applicable to any legally existing or approved lot containing at least twenty-five thousand (25,000) square feet and having a width of at least one hundred and twenty-five (125') feet at the thirty-five (35') foot front setback line, or having a width of at least one hundred and twenty-five (125') feet at the front lot line, provided that said lot meets the requirements of the Water Supply and Pollution Control Division of the New Hampshire Department of Environmental Services.

B. Minimum Lot Width

The minimum lot width required in this district shall be one hundred and twenty-five (125') feet at the thirty-five (35') foot front setback line, or one hundred and twenty-five (125') feet at the front lot line.

C. Minimum Yard Depths

The minimum front yard shall be thirty-five (35') feet; the minimum side and rear yards shall be fifteen (15') feet.

615.4 - Manufactured Housing Subdivisions

A. Housing Types Permitted

Manufactured housing subdivisions may contain manufactured and pre-site built housing, as defined in this Ordinance, as well as conventional site-built housing.

B. Limitation

Manufactured housing subdivisions shall be limited to single family detached dwellings.

C. Provisions

The area and dimensional requirements for individual lots within a manufactured housing subdivision shall be the same as those which apply to conventional single family subdivisions in this district. (See Section 615.3 A, B, and C.)

D. Manufactured Housing Construction Standards

All manufactured housing units placed within a manufactured housing subdivision after the effective date of this Ordinance shall be certified as being constructed in accordance with the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974.

## 615.5 - CAMPGROUNDS

Nothing herein shall prevent land from being utilized, maintained, or operated as a recreational campground, provided that the campground conforms to the regulations of the State of New Hampshire and meets the following requirements:

### A. Operation

All campgrounds shall be permitted to operate only from May 1 through October 31.

### B. Access

Access to the campgrounds shall be from a state highway. Before any campground can be constructed, entrance and exit roadways shall be established with the following minimum characteristics:

1. They shall be a minimum of twenty-five (25') feet wide.
2. They shall be no closer than two hundred and fifty (250') feet from any existing residence or center line of any existing residential curb cut, whichever is closer.

### C. Sites and facilities

Campsites and facilities shall be no closer than one thousand (1,000') feet from an existing residence.

### D. Buffer Zone

Before any campground can be constructed, a buffer zone of five hundred (500') feet from the lot lines for the entire perimeter of the parcel shall be maintained in its natural state. In the absence of natural screening, additional buffer zone requirements may be imposed by the Planning Board.

### E. Signs

Campground signs shall conform to a maximum size of ten (10) square feet, and be limited to one sign for each entrance.

### F. Plan Review

Review and approval by the Planning Board shall be required in accordance with the Land Development Control Regulations (LDCR)

## G. Camping Spaces

Each camping space shall:

1. Contain a minimum land area of two thousand (2,000) square feet, not including roads and access drives.
2. Have, as part of the two thousand (2,000) square feet area, a minimum of two hundred (200) square feet for off-street parking.
3. Be at least forty (40') feet wide.

## H. Service Facilities

A service building, or buildings, for toilets and shower facilities shall be provided. No camping space shall be more than five hundred (500') feet from a service building.

## I. State Approval

Prior to the granting of an Occupancy Permit, written approval of the State Board of Health shall be furnished, certifying that all facilities for water supply, toilets, sewage disposal, and solid waste disposal comply with the State Board's requirements.

## J. Accessory Buildings

Permitted accessory buildings in a campground shall be limited to the following:

1. An office for the manager and staff of the campground, and an office providing adequate first aid facilities, both of which may be in a dwelling or service building.
2. A service building, not to exceed fifteen hundred (1,500) square feet of gross floor space, which may contain equipment and supplies, recreation rooms, and a shop for convenience goods primarily for the occupants of the campground, provided that no advertising device is visible from a street or from adjacent lots.
3. Service buildings to accommodate bathers at beach or pool sites.
4. Additional requirements may be imposed by the Planning Board for any other buildings or structures incidental to the recreational aspects of the campground, including commercial recreational facilities as defined in this Ordinance.
5. Nothing in this subsection 615.5 shall be construed to permit a sexually oriented business within a campground.

## Section 616 - LOW-MEDIUM DENSITY RESIDENTIAL DISTRICT (LMDR)

### 616.1 - Permitted Uses

All uses allowed in Article 600, subsections 615.1A through 615.2C Wireless Communications Facilities are permitted in the Telecommunication Overlay Zone as defined by the overlay zone contained in Section 323.2 A 2 and subject to the provisions of Section 323 governing Wireless Communications Facilities.

### 616.2 - Area and Dimensional Requirements:

#### A. Minimum Lot Area

The minimum lot area required shall be two (2) acres, or larger, as shall be determined by the "Soils Based Lot Size Determination" provisions of the Town of Derry Land Development Control Regulations (LDCR)

#### B. Minimum Lot Width

The minimum lot width required in this district shall be one hundred fifty (150') feet at the thirty-five (35') foot front setback line, or one hundred fifty (150') feet at the front lot line.

#### C. Minimum Yard Depths

The minimum front yard shall be thirty-five (35') feet; the minimum side and rear yards shall be fifteen (15') feet.

### 616.3 - Manufactured Housing Subdivisions: See Section 615.4.

### 616.4 - Campgrounds: See Section 615.5.

## Section 617 - LOW DENSITY RESIDENTIAL DISTRICT (LDR)

### 617.1 - Permitted Uses

- A. All uses allowed in Article 600, Section 615.1A through 615.2C.
- B. Golf course/country club

## 617.2 - Area and Dimensional Requirements:

### A. Minimum Lot Area

The minimum lot area required shall be three (3) acres, or larger, as shall be determined by the "Soils Based Lot Size Determination" provisions of the Town of Derry Land Development Control Regulations (LDCR)

### B. Minimum Lot Width

The minimum lot width required in this district shall be two hundred (200') feet at the thirty-five (35') foot front setback line, or two hundred (200') feet at the front lot line.

### C. Minimum Yard Depths

The minimum front yard shall be thirty-five (35') feet; the minimum side and rear yards shall be fifteen (15') feet.

## 617.3 - Manufactured Housing Subdivisions: See Section 615.4.

## 617.4 - Campgrounds: See Section 615.5.

## ARTICLE 700 - FLOODPLAIN DEVELOPMENT DISTRICT

### Section 701 - General

The following regulations shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency in its "Flood Insurance Study of the Town of Derry, NH" together with the associated Flood Insurance Rate Maps (FIRM) and Flood Boundary and Floodway Maps of the Town of Derry, NH, dated April 15, 1981, which are declared to be a part of this Ordinance and are hereby incorporated by reference.

### Section 702 - Definition of Terms

- A. For purposes of this Article, certain words or terms shall be interpreted as defined herein. Where the definition of a word or term contained in this Section conflicts with a similar word or term as defined in Article 200 of this Ordinance, the definition contained in this Section shall apply only to these floodplain development provisions.
1. AREA OF SHALLOW FLOODING means a designated AO or AH zone on the Flood Insurance Rate Map (FIRM) with a one (1) percent or greater annual possibility of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet-flow.
2. AREA OF SPECIAL FLOOD HAZARD is the land in the flood plain within the Town of Derry subject to a one (1) percent or greater possibility of flooding in any given year. The area may be designated as Zone A on the FIRM, and is designated on the FIRM as Zones A, AO, AH, A130, AE, or A99.
3. BASE FLOOD means the flood having a one (1) percent possibility of being equaled or exceeded in any given year.
4. BASEMENT means any area of a building having its floor subgrade (below ground level) on all sides.
5. BUILDING: see STRUCTURE.
6. BREAKAWAY WALL means a wall that is not part of the structural support of the building and is intended, through its design and construction, to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation.
7. DEVELOPMENT means any man-made change to improved or unimproved real estate including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.
8. FEMA means the Federal Emergency Management Agency.

9. **FLOOD OR FLOODING** means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (a) the overflow of inland or tidal waters, and/or
- (b) the unusual and rapid accumulation or runoff of surface waters from any source.

10. **FLOOD BOUNDARY AND FLOODWAY MAP** is an official map of the Town of Derry, on which FEMA has delineated the "Regulatory Floodway." This map should not be used to determine the correct flood hazard zone or base flood elevation. The Flood Insurance Rate Map (FIRM) will be used to make determinations of flood hazard zones and base flood elevations.

11. **FLOOD ELEVATION STUDY** means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards.

12. **FLOOD INSURANCE RATE MAP (FIRM)** means an official map incorporated with this Ordinance, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the Town of Derry.

13. **FLOOD INSURANCE STUDY:** see FLOOD ELEVATION STUDY.

14. **FLOOD PLAIN or FLOOD-PRONE AREA** means any land area susceptible to being inundated by water from any source (see definition of FLOODING).

15. **FLOOD PROOFING** means any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

16. **FLOODWAY:** see REGULATORY FLOODWAY.

17. **FUNCTIONALLY DEPENDENT USE** means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading and unloading of cargo or passengers, and ship-building and ship-repair facilities, but does not include long-term storage or related manufacturing facilities.

18. **HIGHEST ADJACENT GRADE** means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

19. **HISTORIC STRUCTURE** means any structure that is:

- a. listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior), or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c. individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - (1) by an approved state program as determined by the Secretary of the Interior, or
  - (2) directly by the Secretary of the Interior in states without approved programs.

20. **LOWEST FLOOR** means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Ordinance.

21. **MANUFACTURED HOME** means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than one hundred and eighty (180) days.

22. **MEAN SEA LEVEL** means the National Geodetic Vertical Datum (NGVD) of 1929, or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

23. **100-YEAR FLOOD:** see **BASE FLOOD**.

24. **REGULATORY FLOODWAY** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation. These areas are designated as floodways on the Flood Boundary and Floodway Maps.

25. **SPECIAL FLOOD HAZARD AREA** means an area having special flood, mudslide, or flood-related erosion hazards and shown on an FHB or FIRM as Zone A, AO, A1-30, AE, A99, AH, M or E. (See AREA OF SPECIAL FLOOD HAZARD)

26. **STRUCTURE** means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

27. **START OF CONSTRUCTION** includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within one hundred and eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the state of excavation; or the placement of a manufactured home on a foundation.

Permanent construction does not include land preparation such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure.

28. **SUBSTANTIAL DAMAGE** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50%) percent of the market value of the structure before the damage occurred.

29. **SUBSTANTIAL IMPROVEMENT** means any combination of repairs, reconstruction, alteration or improvements to a structure in which the cumulative cost equals or exceeds fifty (50%) percent of the market value of the structure. The market value of the structure should be:

- a. The appraised value of the structure prior to the start of the initial repair or improvement, or
- b. In the case of damage, the value of the structure prior to the damage occurring.

For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or any alteration of an "historic structure," provided that the alteration will not preclude the structure's continued designation as an "historic structure."

30. **WATER SURFACE ELEVATION** means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains.

### Section 703 - Permit Required

All proposed development in any special flood hazard areas shall require a permit.

### Section 704 - New Construction or Substantial Improvements

The Building Inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in a special flood hazard area, all new construction and substantial improvements shall:

- A. be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- B. be constructed with materials resistant to flood damage;
- C. be constructed by methods and practices that minimize flood damage; and
- D. be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

### Section 705 - Water and Sewer Systems

Where new and replacement water and sewer systems (including on-site systems) are proposed in a special flood hazard area, the applicant shall provide the Building Inspector with assurance that these systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

### Section 706 - Certification

For all new or substantially improved structures located in zones A, A130, AE, AO or AH, the applicant shall furnish the following information to the Building Inspector:

- A. The asbuilt elevation (in relation to NGVD) of the lowest floor (including basement) and include whether or not such structures contain a basement.
- B. If the structure has been floodproofed, the asbuilt elevation (in relation to NGVD) to which the structure was floodproofed.
- C. Any certification of floodproofing.

The Building Inspector shall maintain for public inspection, and shall furnish such information upon request.

## Section 707 - Building Permit to be Withheld

The Building Inspector shall not grant a building permit until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

## Section 708 - Alteration or Relocation of a Watercourse

A. In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Board of the New Hampshire Department of Environmental Services and submit copies of such notification to the Building Inspector, in addition to the copies required by RSA 482A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector, including notice of all scheduled hearings before the Wetlands Board.

B. The applicant shall submit, to the Building Inspector, certification provided by a registered professional engineer assuring that the flood-carrying capacity of an altered or relocated watercourse can and will be maintained.

C. Along watercourses that have a designated Regulatory Floodway, no encroachments, including fill, new construction, substantial improvements, or other development, are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge. In Zone A, the Building Inspector shall obtain, review, and reasonably utilize any floodway data available from federal, state or other sources as criteria for requiring that development meet the floodway requirements of this section.

D. Along watercourses that have not had a Regulatory Floodway designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A130 and AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

## Section 709 - Determination of Flood Elevation

A. In special flood hazard areas, the Building Inspector shall determine the 100-year flood elevation in the following order to precedence according to the data available:

1. In Zones A1-30, AH, and AE, refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM or FHBMs.
2. In unnumbered A zones, the Building Inspector shall obtain, review and reasonably utilize any 100-year flood elevation data available from federal, state, or other sources, including data submitted for development proposals submitted to the community, e.g., subdivisions, site approvals, etc.

3. In Zone AO, the flood elevation is determined by adding the elevation of the highest adjacent grade to the depth number specified on the FIRM, or if no depth number is specified on the FIRM, at least two (2) feet.

B. The Building Inspector's 100year flood elevation determination will be used as criteria for requiring, in Zones A, A1-30, AE, AH, and AO, that:

1. All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the 100year flood elevation;
2. All new construction and substantial improvements of nonresidential structures have the lowest floor (including basement) elevated to or above the 100 year flood level; or together with attendant utility and sanitary facilities, shall:
  - a. be floodproofed so that below the 100year flood elevation the structure is watertight, with walls substantially impermeable to the passage of water;
  - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
  - c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.
3. All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level; and be securely anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
4. Recreation Vehicles placed on sites within zones A1-30, AH, and AE shall either
  - i. be on the site for fewer than one hundred and eighty (180) consecutive days,
  - ii. be fully licensed and ready for highway use, or
  - iii. meet all standards of Section 60.3 (b)(1) of the National Flood Insurance Program regulations and the elevation and anchoring requirements for manufactured homes in paragraph (c)(6) of Section 60.3.
5. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted, providing the enclosed areas meet the following requirements:
  - a. the enclosed area is unfinished or flood resistant, usable solely for parking of vehicles, building access, or storage;

- b. the area is not a basement; and
- c. shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater.

Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of floodwater.

- 6. Proposed structures to be located on slopes in special flood hazard areas, Zones AH and AO, shall include adequate drainage paths to guide flood waters around and away from the proposed structures.

#### Section 710 - Variances and Appeals

- A. Any order, requirement, decision or determination of the Building Inspector made under these floodplain development regulations may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.
- B. If the applicant, upon appeal, requests a variance as authorized by RSA 674:33,I(b), in determining whether or not any variance will be contrary to the spirit of these regulations, the Board of Adjustment shall consider the following:
  - 1. that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense;
  - 2. that, if the requested variance is for activity within a designated Regulatory Floodway, no increase in flood levels during the base flood discharge will result; and
  - 3. that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- C. The community shall:
  - 1. maintain a record of all variance actions, including their justification for their issuance; and
  - 2. report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

## ARTICLE 800 - CONSERVATION CORRIDOR OVERLAY DISTRICT

### Section 801 - Purpose

The purpose of this article is to regulate uses in important wetland and watershed areas. The objective is to prevent the destruction of watershed areas and wetlands which provide flood protection, recharge of ground water supply, and augmentation of stream flow, and for the protection of the community against the costs that may be incurred when unsuitable development occurs in swamps, marshes, along watercourses, or in areas subject to floods. In event of conflict between the requirements of this Article and the permitted uses within a zoning district, the requirements of this Article shall take precedence.

### Section 802 - District Identified

This area, to be known as the Conservation Corridor, shall be all lands in the 100-year flood plain determined by the Federal Insurance Administration's Flood Insurance Rate Maps (FIRM) and the Flood Boundary and Floodway Maps, dated April 15, 1981, on file with the Town Clerk, Planning Board and Building Inspector. These maps, as well as the accompanying "Flood Insurance Study of the Town of Derry, NH," are incorporated herein by reference.

### Section 803 - Permitted Uses

The following uses are permitted within this district:

1. Agriculture
2. Forestry
3. Wildlife management
4. Outdoor recreation activities, providing that they do not alter the existing topography
5. Construction and maintenance of public water supply systems
6. Construction and maintenance of public sewer and utility systems
7. Accessory uses and structures usually associated with these permitted uses, provided that such accessory uses do not affect the existing topography, and that no accessory building is larger than five hundred (500) square feet

## Section 804 - Prohibited Uses

The following uses are prohibited in this district:

1. All new construction or placement of new buildings, except as provided in Section 803
2. New subsurface waste treatment systems
3. Piggeries
4. Manure stockpiling
5. Mink farms
6. Amusement parks
7. Race tracks
8. Outdoor movie theaters
9. Junk yards
10. Any use that, in the opinion of the Zoning Administrator, is contrary to the intent or purposes of this Article

## Section 805 - Special Exceptions

A special exception for the expansion of an existing use may be granted by the Zoning Board of Adjustment provided that:

- A. It is shown, by the applicant, that such expansion will not be contrary to the purposes set forth in this Article; and
- B. Written recommendations of the Conservation Commission are considered by the Zoning Board of Adjustment.

## ARTICLE 900 - WETLANDS CONSERVATION OVERLAY DISTRICT

### Section 901 - Authority and Purpose

By the authority granted in RSA 674:1617 and 674:2021, and in the interest of public health, convenience, safety, and the general welfare, the Wetlands Conservation Overlay District is established in order to regulate the use of land areas subject to extended periods of high water table, flooding, or standing water. It is the intent of this district:

- A. To prevent the development of structures or other land uses on naturally occurring wetlands which would contribute to the pollution of surface and ground water.
- B. To prevent the alteration of natural wetlands which provide flood protection, recharge of ground water supply, or augmentation of stream flow during dry periods.
- C. To prevent unnecessary or excessive expenses to the town to provide and maintain essential services and utilities which could arise because of inharmonious use of wetlands.
- D. To encourage those uses that can be appropriately and safely located in wetland areas.
- E. To create an undisturbed and natural buffer to the Prime Wetlands.
- F. To protect unique and unusual natural areas.
- G. To protect wildlife habitats and maintain ecological balances.

### Section 902 - District Boundaries

The limits of the Wetlands Conservation Overlay District are hereby determined to be the following:

- A. All areas of very poorly drained soils.
- B. Areas of poorly drained soils two thousand (2,000) square feet or more in size, and that exhibit a predominance of fifty (50) percent or more wetland vegetation.
- C. Areas of any wetland of any size if contiguous to surface waters such as lakes, ponds and streams.
- D. Areas designated as bogs regardless of any size.

## Section 903 - Definitions

Words and terms used in this Article are defined as follows:

**BOGS** are highly acidic wetlands that have usually developed in undrained glacial depressions and are generally underlaid by thick layers of saturated organic soils called peat, or as further defined by the New Hampshire Wetlands Board.

**"HIGH INTENSITY SOIL MAPS FOR NEW HAMPSHIRE"**: The most recent document prepared by the Society of Soil Scientists of Northern New England detailing the standard for making high intensity soils maps on file with the Rockingham County Conservation District.

**MARSHES, FRESHWATER** are characterized by herbaceous (soft-stemmed) vegetation or as further defined by the New Hampshire Wetlands Board.

**POORLY DRAINED SOILS** shall be defined as soils with a moderately high water table as described in the report entitled "Soils Information for Resource Planning for the Town of Derry," dated March 1980, or as further defined by "High Intensity Soils Maps for New Hampshire" on file with the Rockingham County Conservation District.

**PRIME WETLANDS** shall be defined as those areas designated "Prime Wetlands" within the scope of RSA 483-A and the New Hampshire Code of Administrative Rules, Part WT700. These wetlands are described in the "Derry Prime Wetlands Report" dated November 11, 1986. The topographic definition of each prime wetland is included in separate maps correlated to the report. Both the aforementioned maps and report are incorporated in this Ordinance by reference. The mapped locations of the Prime Wetlands are identified on maps which are on file with the Derry Planning Office. They are as follows:

WETLAND NUMBER	LOCATION	MAP NUMBER
A/1	N of Hood Pond, off Franklin Street	122
A/6	W of By-Pass 28, E of Scobie PdRd/Shields Brook	134
A/9	E of By-28, S of English Range Road	140
A/11	Abuts Eleanor Ave., E of By-Pass 28	150
A/15	E of Pingree Hill Road, Auburn Line	151
B/6	SW intersection Adams Pond & Hampsteads Roads	130
B/7	SW intersection Cross and Adams Pond Roads	136
B/8	SE of Worthley Road	142
B/9	N of intersection of Beaver Lake & N Shore Roads	142
B/12	N of 102; W of English Range Road	141
B/15	E of Back Chester Road, S of Chester Line	149
B/16	W of Back Chester Road, E of Pioneer Circle	149
C/3	Between Gulf and Island Pond Roads	106
C/4	S of Hampstead Road, E of Oleson Road	132
C/7	W of Damren Road and N of Hampstead Road	132, 138
C/9	N of Walnut Hill between Damren & Adams Pd Roads	143, 137
C/10	N of Walnut Hill Road E of Patridge Lane	110, 137
D/5	Feeds into Ballard Pond	110

WETLAND NUMBER	LOCATION	MAP NUMBER
D/7	Island Pond Road S of Drew Road	120
D/8A	Drew Brook; crossed by Drew Road	121, 127
D/8B	Drew Brook; Drew Road	121
D/14	Leavitt Brook, RR bed, Jackman Road	126
E/1	Windham Line, W of Frost Road	102
E/8	Windham Road	108
F/6	NE of Beacon Hill Road on I-93	101,102,108
F/7	E of Fordway Ext. and S of Bowers Road	107, 108
F/11	Along Berry Road S of Claire Avenue	114
F/13	N of Pierce Avenue and along the Brook	123, 117

PRIME WETLANDS BUFFER ZONE shall be defined as that area extending one hundred fifty (150) feet beyond the boundary of each prime wetland as defined above.

QUALIFIED SOIL SCIENTIST: A person qualified in soil classification and mapping who is recommended or approved by the State Board of Natural Scientists.

SWAMPS contain predominantly woody vegetation (shrubs and trees) and range in wetness from occasionally flooded to standing water most of the year, or as further defined by the New Hampshire Wetlands Board.

VERY POORLY DRAINED SOILS shall be defined as soils with a permanent high water table as described in the report entitled "Soils Information for Resource Planning for the Town of Derry," dated March 1980, or as further defined by "High Intensity Soils Maps for NH" on file with the Rockingham County Conservation District.

WETLANDS are areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. They include, but are not limited to, swamps, bogs, marshes, ponds, and lakes, as well as soils that are defined as poorly or very poorly drained.

#### Section 904 - Incorrectly Designated Areas

When a boundary of the Wetlands Conservation Overlay District is disputed, or in the event that an area is incorrectly designated as being poorly drained or very poorly drained on the "Town of Derry, New Hampshire, Soils Information for Resource Planning," March 1980 map, the Planning Board and/or the Conservation Commission, at the applicant's expense, may engage a professional biologist and/or soils scientist qualified in field analysis to determine the precise location of the Wetlands Conservation Overlay District boundaries of the properties affected. A report of their findings shall be submitted to the Planning Board and shall include, but not be limited to, a revised soils map of the area in question prepared by a qualified soils scientist along with a written report.

The Planning Board shall adjust the boundary of this district, if necessary, based on the evidence provided as set forth above. If the evidence indicates that the boundary or area in question has been incorrectly designated, the restrictions contained in this Article shall not apply. Conversely, in the event that an area has poorly drained or very poorly drained soils within the meaning of the aforementioned definitions, then the restrictions contained in this Article shall apply. The Planning Board shall reserve the right to withhold action on any plat pending the results of an onsite inspection by the Board or its appointed agent.

## Section 905 - General Provisions

The following general provisions shall apply with respect to all permitted, special exception, and conditional use applications pertinent to this district:

### A. Environmental Assessment

The Planning Board, with the concurrence of the Conservation Commission, may require the applicant to submit an environmental impact assessment when necessary to evaluate an application made under this Article. The cost of this assessment shall be borne by the applicant. The Planning Board may also assess the applicant reasonable fees to cover the costs of other special investigative studies and for the review of documents required by particular applications.

### B. Compliance with Conditions

The Zoning Board of Adjustment may itself, in cases where it has jurisdiction, or upon petition from the Building Inspector, Conservation Commission or the abutters, hire a qualified consultant or consultants to prepare such studies as are necessary to determine whether the conditions set forth in this Article have been met. The costs of such studies shall be borne by the applicant.

### C. Performance Security

Prior to the granting of a Conditional Use Permit under this Article, the applicant shall agree to submit a performance security to the Planning Board. The security shall be submitted and approved prior to issuance of any permit authorizing construction. The security shall be submitted in a form and amount with surety and conditions satisfactory to the Conservation Commission and approved by the Planning Board to ensure the construction has been carried out in accordance with the approved design.

### D. Filled Lands and Pre-Existing Uses

1. Lands which may have been wetlands, but which were filled under properly issued state and town permits granted prior to the adoption of this Article, shall be judged according to the soils and flora existing at the site at the time application for building permit or subdivision is made.
2. Structures and uses existing at the time of the adoption of this Article may be continued, provided that such use shall not be expanded to encroach further upon the wetlands or designated setback areas.

#### E. Exemption for Residential Structures

Notwithstanding other provisions of this Article, the construction of additions and extensions to one- and two-family dwellings shall be permitted within the Wetlands Conservation Overlay District provided:

1. The dwelling lawfully existed prior to February 4, 1988;
2. That the proposed construction conforms with all other applicable ordinances and regulations of the Town of Derry.

#### F. Special Exceptions; Vacant Lots of Record

Other provisions of this Article notwithstanding, upon application to the Board of Adjustment, a special exception shall be granted to permit the erection of a structure within the Wetlands Conservation Overlay District on vacant lots, provided that all of the following conditions are found to exist:

1. The lot upon which an exception is sought was an official lot of record as recorded in the Rockingham County Registry of Deeds prior to the date of the first legal notice pertaining to this Ordinance, posted and published in the Town of Derry, New Hampshire.
2. The use for which the exception is sought cannot feasibly be carried out on a portion or portions of the lot which are outside the Wetlands Conservation Overlay District.
3. Due to the provisions of this Ordinance, no reasonable and economically viable use of the lot can be made without the exception.
4. The design and construction of the proposed use will, to the extent practical, be consistent with the purpose and intent of this Article.
5. The proposed use will not create a hazard to individual or public health, safety, and welfare due to the loss of wetlands, the contamination of ground water or other reason.

#### G. Conflicting Regulations

In all cases where the Wetlands Conservation Overlay District is superimposed over another zoning district in the Town of Derry, that district whose regulations are the more restrictive shall apply.

## Section 906 - District Provisions

### 906.1 - Prime Wetlands and Prime Wetlands Buffer Zones

#### A. Permitted Uses

Permitted uses in areas designated as prime wetlands and/or prime wetlands buffer zones are as follows:

1. Wildlife habitat development and management.
2. Conservation areas and nature trails.
3. Cultivation and harvesting of crops according to recognized soil conservation practices, including the protection of the prime wetlands from pollution caused by fertilizers, pesticides, and herbicides used in such cultivation.

#### B. Conditional Uses

A Conditional Use Permit may be granted by the Planning Board (RSA 674:21 II) for the following purposes:

1. Forestry and tree farming within the buffer zone, using best management practices in order to protect prime wetlands from damage, to prevent sedimentation, and to prevent destruction of wildlife habitats, provided that any forestry and/or tree farming activities shall first be reviewed and approved by the Conservation Commission. Final approval shall be given by the Planning Board.
2. The construction of fences, foot bridges, catwalks, and wharves only, provided:
  - a. said structures are constructed on posts or pilings so as to permit the unobstructed flow of water;
  - b. the natural contour of the prime wetland is preserved;
  - c. the Conservation Commission has first reviewed and approved the proposed construction; and
  - d. the Planning Board has received Conservation Commission approval in writing and has reviewed the proposed construction.

#### C. Prohibited Use

No dredging or filling shall be permitted in the Prime Wetlands.

## D. Special Exception in Prime Wetlands Buffer Zones

1. Upon application to the Zoning Board of Adjustment, a special exception shall be granted for uses in the outermost seventy-five (75) feet of the Prime Wetlands Buffer Zones, provided that all of the following conditions are found to exist:
  - a. The proposed special exception is essential to the productive use of land not within the Prime Wetlands Buffer Zone.
  - b. Design and construction methods will be such as to minimize detrimental impact upon the Prime Wetland and the seventy-five (75) foot buffer nearest the Prime Wetland. The site will be restored as nearly as possible to its original condition.
  - c. Economic advantage alone is not reason for the proposed construction.
  - d. The use for which the exception is sought cannot feasibly be carried out on a portion or portions of the lot which are outside the Prime Wetlands Buffer Zone.
  - e. The design and construction of the proposed use will, to the extent practical, be consistent with the purpose and intent of this Article.
  - f. The proposed use will not create a hazard to individual or public health, safety, and welfare due to the loss of the Prime Wetlands Buffer Zones, the contamination of ground water or other reason.
  - g. Any special exception granted shall not disturb the seventy-five (75) feet of the Prime Wetlands Buffer Zone nearest the Prime Wetland.
  - h. When a parcel is being developed, no landlocked land or unbuildable lot shall be created that would require a special exception or variance under this Article.
2. Studies/reports that may be required:
  - a. Botanist
  - b. Biologist
  - c. Soil Scientist
  - d. Sediment/Erosion Control Plan
  - e. Impact on the wetland, water quality and habitat
  - f. Drainage calculations
  - g. Amount of area to be disturbed
3. Appropriate escrow shall be established for construction and inspection.
4. No special exception shall be granted in the Prime Wetlands.

5. The hearing for the special exception shall require a joint meeting of the Zoning Board of Adjustment, Planning Board, and the Conservation Commission, provided there is a significant and substantial impact to the productive use of the land defined as landlocked or unbuildable lots caused by the creation of the Prime Buffer Zones.

#### E. Pre-existing Use in the Prime Wetland Buffer Zones

1. Structures and uses existing at the time of the adoption of this Ordinance may be continued.
2. Where an existing use within the buffer is destroyed or in need of extensive repair, it may be rebuilt provided that such rebuilding is completed within one year of the event causing destruction, and the new or rebuilt use shall not extend further into the buffer area than the original use.
3. Expansion of an existing use shall require a permit from the Code Enforcement Officer (CEO).

The application for a permit shall be accompanied by two (2) copies of a drawing of the proposal prepared to scale, or so that dimensions are clearly defined. One copy shall be retained by the CEO and one copy shall be forwarded (by the CEO) to the Conservation Commission a minimum of five (5) working days prior to the issuance of the permit.

If the proposed expansion of use is found to be detrimental to any function of the wetland, the CEO shall not issue the permit.

#### 906.2 - Poorly Drained and Very Poorly Drained Soils, Other than Prime Wetlands

##### A. Permitted Uses

Any of the following uses that do not result in the erection of any buildings, and that are otherwise permitted by this Ordinance:

1. Poorly Drained Soils - Permitted uses in areas of poorly drained soil are as follows:
  - a. Any use otherwise permitted by this Ordinance and state and federal laws that does not involve the erection of a structure, and that does not alter the surface configuration of the land by the addition of fill or by dredging, except as a common treatment associated with a permitted use.
  - b. Cultivation and harvesting of crops according to recognized soil conservation practices, including the protection of the wetlands from pollution caused by fertilizers, pesticides and herbicides used in such cultivation.

- c. Forestry and tree farming, using best management practices in order to protect poorly drained soils and streams from damage, and to prevent sedimentation.
- d. Wildlife habitat development and management.
- e. Recreational uses consistent with the purpose and intent of this Article.

2. Very Poorly Drained Soils - Permitted uses in areas containing very poorly drained soils, marshes, open water, and perennial streams are as follows:

- a. Uses specified under Part A.1 (a through e) of this sub-section 906.2 shall be permitted except that:
  - (1) there shall be no alteration of the surface configuration of the land by filling or dredging; and
  - (2) there shall be no use which results in the erection of a structure, except as provided for in Part A.2.b. below, in accordance with the same provisions which apply to those uses.
- b. The construction of fences, foot bridges, catwalks and wharves only, provided:
  - (1) said structures are constructed on posts or pilings so as to permit the unobstructed flow of water;
  - (2) the natural contour of the wetland is preserved;
  - (3) the Conservation Commission has first reviewed and approved the proposed construction; and
  - (4) the Planning Board has received Conservation Commission approval in writing, and has reviewed and approved the proposed construction.

3. Bogs - Permitted uses in bogs shall be limited to only those uses specified in Part A.2.b. above of this sub-section 906.2, and then only in accordance with the same provisions as apply to those uses.

## B. Conditional Uses

A Conditional Use Permit may be granted by the Planning Board (RSA 674:21 II) for:

1. the construction of roads and other access ways;
2. pipelines, power lines and other transmission lines;
3. water impoundment and the construction of well water supplies;
4. drainage ways to include streams, creeks or other paths of normal runoff water; and
5. common agricultural land drainage.

## C. Conditional Use Provisions

Such uses, for which a Conditional Use Permit may be granted, may be permitted provided that all of the following conditions are found to exist:

1. The proposed construction is essential to the productive use of land not within the Wetlands Conservation Overlay District.
2. Design and construction methods will be such as to minimize detrimental impact upon the wetland, and the site will be restored as nearly as possible to its original condition.
3. No alternative which does not cross a wetland, or has less detrimental impact on the wetland, is feasible.
4. Economic advantage alone is not reason for the proposed construction.

## ARTICLE 1000 - EARTH REMOVAL REGULATIONS

### Section 1001 - Authority and Purpose

Chapter 155E of the New Hampshire Revised Statutes Annotated requires that, with several exceptions, all mining and excavation operations in the State obtain prior approval and permit from the municipality in which the operation is to occur. The purpose of the Statute and of these regulations is to minimize safety hazards created by open excavations; to safeguard the public health and welfare; to preserve our natural assets of soil, water, forests and wildlife; to maintain aesthetic features of our environment; to prevent land and water pollution; and to promote soil stabilization.

### Section 1002 - Definitions

- A. "Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be affected by the proposal under consideration. For purposes of receipt of notification by the municipality of a public hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term "abutter" means the officers of the collective or association, as defined in RSA 356B:3,XXIII.
- B. "Application" means a completed application for an excavation permit. An application shall not be considered complete until all of the Excavation Application Checklist items have been completed and accepted to the satisfaction of the Regulator in addition to any other requirements of this or any other ordinance or other regulations of the Town of Derry.
- C. "Commercial" means any use of any earth material for sale or resale on or off the site of the excavation area. In addition, an excavation shall be considered commercial if earth materials are transported to other land whose ownership is different than the ownership of the land from which the earth was excavated. Excavations which use earth materials in the processing of other material such as, but not limited to, concrete, asphalt and other building materials shall be considered commercial.
- C. "Dimension stone" means rock that is cut, shaped, or selected for use in blocks, slabs, sheets, or other construction units of specified shapes or sizes and used for external or interior parts of buildings, foundations, curbing, paving, flagging, bridges, revetments, or for other architectural or engineering purposes. Dimension stone includes quarry blocks from which sections of dimension stone are to be produced. Dimension stone does not include earth as defined in Part E of this Section.
- E. "Earth" means sand, gravel, rock, soil or construction aggregate produced by quarrying, crushing or any other mining activity or such other naturally occurring unconsolidated materials that normally mask the bedrock.

F. "Excavation area" means the area within an excavation site where excavation has occurred or is eligible to occur under the provisions of these regulations which is used, or has been used, for the commercial taking of earth, including all slopes.

G. "Excavation site" means any area of contiguous land in common ownership upon which excavation takes place.

H. "Regulator" means the Planning Board of the Town of Derry.

### Section 1003 - Permit Required

No owner shall permit any excavation of earth on his premises without first obtaining a permit therefor, except as follows:

A. Existing Excavations. The owner of an excavation which lawfully existed as of August 24, 1979, from which earth material of sufficient weight or volume to be commercially useful has been removed during the 2 year period before August 24, 1979, may continue such existing excavation of the excavation site without a permit, subject to the following:

1. Such an excavation site shall be exempt from the provisions of local zoning provided that, at the time the excavation was first begun, it was in compliance with any local ordinances and regulations that may have been in effect.
2. Such an excavation area may not be expanded, without a permit under these regulations, beyond the limits of the Town of Derry and the area which, on August 24, 1979 and at all times subsequent thereto, has been contiguous to and in common ownership with the excavation site of that date, and appraised and inventoried for property tax purposes as part of the same tract as the excavation site as of that date, as modified by the limitations of Section 1006, Parts A through D, inclusive.

The term "contiguous" means land whose perimeter can be circumscribed without interruption in common ownership, except for roads or other easements, in the Town of Derry.

3. When such excavation is not allowed in that location by the Town of Derry Zoning Ordinance in effect on August 4, 1989, or when the Zoning Ordinance allows such excavation only by special exception, expansion may be restricted or modified with conditions by order of the Regulator if, after notice to the owner and a hearing, the Regulator finds that such expansion will have a substantially different and adverse impact on the neighborhood.
4. Such excavation shall be performed in compliance with the express operational and reclamation standards contained in these regulations (Sections 1006 through 1008).

5. The owners or operators of any existing excavation area for which no permit has been obtained under these regulations and for which an excavation report, as required by RSA 155E:2,I(d), was not filed with the Regulator by August 4, 1991 shall be determined to be abandoned per Part B, subpart 1.c of this Section.

The excavation report shall contain the following information:

- a. the location of the excavation by tax map and parcel number;
- b. the date the excavation first began;
- c. a description of the limits of permissible expansion as described in Section 1003, Part A, subpart 2, which are claimed to apply to the excavation;
- d. an estimate of the area which has been excavated to date; and
- e. an estimate of the amount of commercially viable earth materials still available on the parcel.

6. The exemption from local zoning or site location regulations as stated in subpart 1 of this Part A shall include the quarrying or crushing of bedrock for the production of construction aggregate; provided, however, that no owner shall permit any such quarrying or crushing of bedrock to occur for the first time on any excavation site without first obtaining a permit therefor under these regulations.

B. **Abandoned Excavations.** The permit and zoning exemptions under this Section shall not apply to any abandoned excavation, as defined in subpart 1, below.

1. For purposes of this Part, any excavation, except for excavations or excavation sites described in Part C of this Section 1003, whether subject to a permit under these regulations or not, for which the affected area has not yet been brought into complete compliance with the Reclamation Standards of these regulations, shall be deemed "abandoned" if:
  - a. No earth material of sufficient weight or volume to be commercially useful has been removed from that excavation site during any 2 year period, either before, on, or after August 4, 1989; provided, however, that before the end of such 2 year period, the owner or operator may extend the period by submitting to the Regulator a reclamation timetable to be approved by the Regulator, and by posting a bond or other security with the Town Treasurer in a form and in an amount prescribed by the Regulator, sufficient to secure the reclamation of the entire excavation site in accordance with the reclamation standards contained in these regulations; or

- b. The excavation site is in use and is not an excavation or excavation site as described in Part C of this Section 1003, but does not conform with the incremental reclamation standards of these regulations, or the owner or operator has not posted a bond or other security and submitted a reclamation timetable to be approved by the Regulator as described in subpart 1.a of this Part B; or
  - c. The owner or operator of the excavation has neither secured a permit pursuant to these regulations nor filed a report of an existing excavation pursuant to Section 1003, Part A, subpart 5 within the prescribed period.
- 2. In addition to the enforcement remedies provided in Section 1017, the Regulator may order the owner of any land upon which an abandoned excavation is located to either file a reclamation timetable, to be approved by the Regulator, and bond or other security as described in Section 1003, Part B, subpart 1.a, above, or to complete reclamation in accordance with these regulations within a stated reasonable time. Such an order shall only be made following a hearing for which notice has been given in accordance with Section 1011, if the Regulator finds that the public health, safety, or welfare requires such reclamation.

If the owner fails to complete the reclamation within the time prescribed in the order, the Regulator may cause the reclamation to be completed at the expense of the Town. The Town's costs shall constitute an assessment against the owner, and shall create a lien against the real estate on which the excavation is located. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes.
- 3. The site of an excavation which ceased commercially useful operation prior to August 24, 1977, but for which the affected area has not been brought into compliance with the reclamation standards of these regulations, may be made subject to the remedy prescribed in subpart 2 of this Part B only if the Regulator finds, in writing, that specified reclamation measures are necessary to eliminate or mitigate an identified hazard to public health and safety.

C. Stationary Manufacturing Plants.

- 1. No permit shall be required under these regulations for excavation from an excavation site which, on August 4, 1989, was contiguous to or was contiguous land in common ownership with a stationary manufacturing and processing plant which was in operation as of August 24, 1979, and which used earth obtained from such excavation site. Such excavation shall be performed in compliance with the operational and reclamation standards as expressly set forth in Sections 1006 through 1008 inclusive of these regulations, which express standards shall be the sole standards with which

such excavations must comply in order to retain their non-permit status as provided under this paragraph. Loss of such non-permit status shall be preceded by written notice from the Regulator that the excavation is not in compliance and the owner shall have failed to bring such excavation into compliance within thirty (30) days of receipt of such notice. Such excavation may be expanded without a permit under these regulations to any contiguous lands which were in common ownership with the site of the plant on August 4, 1989, except as limited by Section 1006, Parts A through E, inclusive.

2. No further permit shall be required under these regulations for excavation from a site which, on August 4, 1989, was contiguous to or was contiguous land in common ownership with a stationary manufacturing and processing plant for which a local or state permit has been granted since August 24, 1979, and before August 4, 1989, which uses earth obtained from such site. It is further provided that their operation and reclamation shall continue to be regulated by such local or state permits and any renewals or extensions thereof by the permitting authority or authorities.

D. Highway Excavations. No permit shall be required under these regulations for excavation which is performed exclusively for the lawful construction, reconstruction, or maintenance of a class I, II, III, IV, or V highway by a unit of government having jurisdiction for the highway or by an agent of the unit of government which has a contract for the construction, reconstruction, or maintenance of the highway, subject, however, to the following:

1. A copy of the pit agreement executed by the owner, the agent, and the governmental unit shall be filed with the Regulator prior to the start of excavation. The failure to file such agreement, or the failure of the excavator to comply with the terms of such agreement, shall be deemed a violation of these regulations, and may be enforced pursuant to Section 1017.
2. Such excavation shall not be exempt from the Town of Derry Zoning Ordinance, or other applicable ordinances, unless such an exemption is granted pursuant to subpart 3 below, or from the operational and reclamation standards as expressly set forth in Sections 1006 through 1008, inclusive, of these regulations, which express standards shall be the sole standards with which such excavations must comply in order to retain their non-permit status as provided under this Part D. Before beginning such excavation, the governmental unit or its agents shall certify to the Regulator that:
  - a. The excavation shall comply with the operational and reclamation standards of Sections 1006 through 1008, inclusive, of these regulations;
  - b. The excavation shall not be within fifty (50) feet of the boundary of a disapproving abutter or within ten (10) feet of the boundary of an approving abutter, unless requested in writing by said approving abutter;

- c. The excavation shall not be within one hundred and fifty (150) feet of any dwelling which either existed or for which a building permit has been issued at the time the excavation is commenced;
- d. The excavation shall not be unduly hazardous or injurious to the public welfare;
- e. Existing visual barriers to public highways shall not be removed, except to provide access to the excavation;
- f. The excavation shall not substantially damage a known aquifer, so designated by the U.S. Geological Survey; and
- g. All required permits for the excavation from state or federal agencies have been obtained.

3. The New Hampshire Department of Transportation or its agent may apply directly to the appeals board created under RSA 21L to be exempted from the provisions of the Town of Derry Zoning Ordinance or other ordinances or regulations, with respect to the excavation or transportation of materials being used exclusively for the lawful construction, reconstruction, or maintenance of a class I, II, or III highway.

- a. The application shall state whether the applicant has requested any exceptions or variances which may be available at the local level, and shall describe the outcome of such requests.
- b. Prior to acting on the application, the board shall hold a hearing in the Town of Derry. At least seven (7) days prior to such hearing, notice shall be published in a newspaper of general circulation in the Town, and shall be sent by certified mail to the applicant, the Mayor, the Chair of the Planning Board and the Conservation Commission and, if the proposed exemption concerns an excavation site, to the abutters of that site as defined in Section 1002, Part A.
- c. Following the hearing, the board shall issue a written decision, copies of which shall be mailed to the applicant and the parties to whom notice was sent. If an exemption is granted, the written decision shall include:
  - (1) A statement of the precise section of the ordinance or regulation from which the applicant is exempted. The applicant shall not be exempt from any section or provisions not so listed.
  - (2) An identification of the public interest being protected by the ordinance or regulation.

- (3) A statement of the State interest involved, and of why, in the opinion of the board, that the State interest overrides the interest protected by the ordinance or regulation.
- (4) Any conditions to be imposed on the applicant to protect the public health, safety, or welfare.
- d. The decision of the board may be appealed in the manner provided for zoning decisions in RSA 677:414; provided, however, that a decision under this subpart 3 shall be considered a rehearing under RSA 677, and no further motion for rehearing shall be required.

**E. Other Exceptions.**

- 1. The following additional excavation activities are exempt from the permit requirements of these regulations:
  - a. Excavation that is exclusively incidental to the lawful construction or alteration of a building or structure or the construction or alteration of a parking lot or way including a driveway on a portion of the premises where the removal occurs; provided, however, that no such excavation shall be commenced without a permit under these regulations unless all state and local permits required for the construction or alteration of the building, structure, parking lot, or way have been issued.
  - b. Excavation that is incidental to agricultural or silvicultural activities, normal landscaping or minor topographical adjustment.
  - c. Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12E.
- 2. A person owning land abutting a site which was taken by eminent domain or by any other governmental taking upon which construction is taking place may stockpile earth taken from the construction site and may remove the earth, at a later date, after giving written notification to the Regulator of the intent to remove the stockpiled earth.

**Section 1004 - Permit Application**

A. Any owner or owner's designee subject to these regulations shall, prior to excavation of his land, apply to the Regulator for an excavation permit and submit a reclamation plan. A copy of the application shall also be submitted to the Town of Derry Conservation Commission. The application shall be signed and dated by the applicant and shall contain at least the following information in addition to that required by the Excavation Application Checklist and other applicable regulations:

1. The name and address of the owner of the land to be excavated;
2. The name and address of the person who will actually do the excavating;
3. The names and addresses of all abutters to the premises which will be excavated;
4. An Excavation Plan at a scale of no less than one inch equals one hundred (100') feet and showing the area to be excavated, appropriate buffers, and any dwelling units, septic systems, and wells within 150 feet of the perimeter of the area to be excavated. All plans submitted to the Regulator shall comply with the Erosion and Sedimentation Control provisions of the Town of Derry Land Development Control Regulations (LDCR). All plans submitted shall be of a quality that they are easily understood and of an accuracy that compliance can easily be checked. At least six (6) copies of the final plans shall be filed with the Regulator prior to the issuance of a permit.

The Excavation Plan shall include:

- a. The tax map and number of the parcel to be excavated;
- b. The seal and signature of a land surveyor or professional engineer registered in the State of New Hampshire;
- c. Existing topography of the site and within one hundred (100') feet thereof at contour intervals of two (2) feet, based on a permanent assumed benchmark;
- d. Proposed topography of the site and within one hundred (100') feet thereof at two-foot contour intervals at the completion of excavation and restoration;
- e. The number of acres involved in the project;
- f. The volume of material to be removed;
- g. The breadth, depth and slope of the proposed excavation (and existing excavation where applicable);
- h. The estimated time of duration and description of phasing of the project;
- i. Existing vegetation;
- j. All surface drainage patterns including wetlands and standing water, lakes, streams, and the like;
- k. Location of all easements, on and below the ground;

- I. Names, locations, widths and elevations of all public roads and rights-of-way on and adjacent to the excavation site;
- m. A log of borings or test pits that extend to either the seasonal high water table, ledge, or a minimum of six (6) feet below the maximum proposed excavation depth, including location and soils data;
- n. The location and extent of any stone walls, ledge outcroppings, wells, existing buildings, septic systems, utilities, significant natural and man-made features, and the like;
- o. A locus map, at a scale of one inch equals one thousand feet (1":1,000'), showing the proposed operation in relation to existing roads;
- p. Any existing and all proposed excavation areas;
- q. Any existing and all proposed accessory facilities/activities;
- r. Existing and proposed access roads, including widths and surface materials;
- s. Existing and proposed fencing, buffers or visual barriers, including heights and materials;
- t. Storage areas for topsoil to be used in reclamation;
- u. All measures to control erosion, sedimentation, water and air pollution, and hazards to human safety;
- v. The locations of existing buildings, structures, septic systems and wells on abutting properties within one hundred and fifty (150') feet of the property boundary;
- w. The locations of all driveways and road intersections within two hundred (200') feet of the property boundary;
- x. Aquifer locations and limits as identified by the U.S. Geological Survey and other acceptable sources; and
- y. Zoning districts on and within one hundred and fifty (150') feet of the property.

5. A Reclamation Plan, including a timetable therefor, at the same scale as the Excavation Plan, and covering the same area. All plans submitted to the Regulator shall comply with the Erosion and Sedimentation Control provisions of the Town of Derry Land Development Control Regulations (LDCR)

All plans submitted shall be of a quality that they are easily understood and of an accuracy that compliance can easily be checked. At least six (6) copies of final plans shall be filed with the Regulator prior to the issuance of a permit.

The Reclamation Plan shall include:

- a. The seal and signature of a professional engineer or land surveyor registered in the State of New Hampshire;
- b. All boundaries of the area proposed for reclamation;
- c. The final topography of the area proposed for reclamation;
- d. Final surface drainage patterns, including the locations and physical characteristics of all drainage facilities;
- e. A schedule of vegetative and temporary reclamation activities including seeding mixtures, mulching materials, fertilizer types, lime and application rates;
- f. Soil conditioning specifications, i.e., liming and fertilizing required based on soils analysis performed by the University of New Hampshire or other equivalent organization;
- g. The plant materials to be used in the restoration, and their quantities and sizes;
- h. The subsequent reuse of the site, if known;
- i. Cross-sectional views showing existing, excavated, and restored topographic configuration;
- j. An erosion and sedimentation control plan, regardless of the size of the excavation area;
- k. Such other information as the Regulator may reasonably require.

6. Copies of related permit approvals and other documents pertinent to the excavation proposal, such as the Water Supply and Pollution Control Division (RSA 485A:17, RSA 148:5a), the Wetlands Board (RSA 482A), stump disposal, New Hampshire Department of Transportation (RSA 249:1318, access permit), and any other permits required by state or federal regulations.

7. Hauling information, including routes to be utilized, the type and weight of motor vehicles involved, and the frequency and schedule of operations of such vehicles shall be provided to the Regulator prior to the issuance of an excavation permit. The Regulator may require modifications to such plans and/or may place conditions upon such operations, depending on surrounding land uses and road conditions. The Regulator reserves the right to conduct a traffic study at the applicant's expense to ensure that public safety, neighborhood compatibility and road capacity and condition have been properly considered and addressed in the hauling plan.
8. Statements of specific actions to be taken by the applicant on the excavation site relative to fuel and chemical handling and storage, dust control, traffic, noise control and abatement, and comprehensive site safety of unauthorized persons.
9. Proof that written notice of the proposed excavation has been given to the holders of any mortgages on the property and, if the applicant is not the owner, proof that written notice of the proposed excavation has been given to such owner and that the owner has agreed to allow such excavation.
10. A written statement from the Tax Collector of the Town of Derry (on a form to be furnished and prescribed by the Planning Board) certifying that all current taxes levied against the property have been paid in full and that there are no unreleased tax liens encumbering said property.
11. All application fees as per the Excavation Application Form.
12. Such other information as the Regulator may reasonably require.

#### B. Additional Permit Requirements

1. No excavation of a new area or expansion of an existing area shall exceed five (5) acres in size at any one time. Any permitted excavation shall be reclaimed according to the approved application within one (1) year after the permit expiration date. If reclamation is not completed within one (1) year after the permit expiration date, the Town may declare part or all of the bond forfeited, and use these monies to reclaim the site.
2. If an existing excavation in operation at the time of the adoption of these regulations cannot be restored within one (1) year, no additional new excavation into an undisturbed area shall be permitted until the existing excavated area has been restored in accordance with these regulations.
3. The applicant shall be responsible for a proportionate share of the cost of refurbishing any existing Town road(s) which access the excavation site, and for the repair of Town-maintained roads which are damaged as a result of hauling earth from the site. The Regulator may require these costs to be bonded prior to the granting of a permit to excavate.

4. No solid and/or hazardous waste, septime, dredge spoils, or organic waste and debris shall be disposed of on the excavation site unless specifically authorized and/or permitted by the appropriate local, state or federal authority.

## Section 1005 - Prohibited Projects

The Regulator shall not grant a permit:

- A. Where the excavation would violate the Operational Standards of Section 1006 of these regulations;
- B. For any excavation to occur within:
  1. Fifty (50') feet (measured horizontally) of the boundary of any disapproving abutter or within ten (10') feet (measured horizontally) of the boundary of any approving abutter unless written approval is requested by said abutter.
  2. The term "disapproving abutter," as used in these regulations, shall be considered to be one who has not filed a written request with the Regulator to allow an excavation within fifty (50') feet of his property line.
- C. When the excavation is not permitted by zoning or other applicable ordinance;
- D. When the issuance of the permit would be unduly hazardous or injurious to the public welfare;
- E. When the excavation would substantially damage a known aquifer, so designated by the United States Geological Survey;
- F. When the excavation requires land use permits from state or federal agencies; but the Regulator may approve the application when all necessary land use permits have been obtained;
- G. Where the project cannot comply with the reclamation standards contained in Sections 1007 and 1008 of these regulations; or
- H. Where existing visual barriers to public highways would be removed, except to provide access to the excavation.

## Section 1006 - Operational Standards

It shall be a violation of these regulations for any person to excavate, or for any owner to permit excavation on his excavation site, when such excavation is subject to a permit under these regulations, without complying with the following minimum standards or when such excavation is not subject to a permit under these regulations pursuant to Section 1003 without complying with the following express standards:

- A. No excavation shall be permitted below road level within fifty (50') feet of the right-of-way of any public highway as defined in RSA 229:1 unless such excavation is for the purpose of said highway.
- B. No excavation shall be permitted within fifty (50') feet of the boundary of a disapproving abutter or within ten (10') feet of the boundary of the approving abutter. Any abutter who does not submit a written request for approval of an excavation to occur within ten (10') feet of his/her property boundary shall be considered a disapproving abutter.
- C. No excavation shall be permitted closer than one hundred and fifty (150) feet to an existing dwelling or to a dwelling for which a building permit has been issued at the time the excavation is begun.
- D. No excavation shall be permitted within seventy-five (75') feet of any great pond, navigable river, or any other standing body of water ten (10) acres or more in area or within twenty-five (25') feet of any other stream, river, or brook which normally flows throughout the year, or any naturally occurring standing body of water less than ten (10) acres, prime wetland as designated in accordance with RSA 482A:15,I or any wetland greater than five (5) acres in area as defined by the Wetlands Board.
- E. Vegetation shall be maintained or provided within the buffer areas required by parts A through C of this Section.
- F. Natural vegetation adjacent to neighboring properties on which excavation is not intended shall be maintained for the purposes of erosion control, screening, noise reduction, and property valuation. The Regulator shall have the authority to require additional screening (e.g., vegetation or fencing) where necessary.
- G. Appropriate erosion, sedimentation, air and water quality control measures shall be integrated into the excavation process. Excavations shall comply with the Erosion and Sedimentation Control provisions in the Town of Derry Land Development Control Regulations (LDCR).
- H. Excavation practices which result in continued siltation of surface waters or any degradation of water quality of any public or private water supplies are strictly prohibited.
- I. Drainage shall be maintained so as to prevent the accumulation of free-standing water for prolonged periods.

- J. No fuels, lubricants, or other toxic or polluting materials or chemicals shall be stored onsite unless done so in compliance with state and federal laws and regulations pertaining to such materials.
- K. Where the depth of the excavation will exceed fifteen (15) feet and temporary slopes will exceed a grade of 1:1, a fence or other suitable barricade shall be erected to warn of danger or to limit access to the site.
- L. Topsoil shall be stripped from the excavation area and stockpiled for use in subsequent reclamation of the site. It shall be protected from erosion (e.g., by seeding, covering, or other acceptable practices). No topsoil shall be removed from the site without first obtaining specific written approval from the Regulator.
- M. Prior to the removal of topsoil or other overburden material from any land area that has not yet been excavated, the excavator shall file a reclamation bond or other security as prescribed by the Regulator, sufficient to secure the reclamation of the land area to be excavated.
- N. All temporary structures and processing machinery required during excavation operations shall be removed from the site within thirty (30) days after such operations cease.
- O. Startup and shut-down times for all machinery associated with an excavation operation shall be determined by the Regulator. Such times shall be reasonable with respect to the type of operation proposed and the character of the neighborhood in which it is located.
- P. All vehicles transporting excavated material shall utilize adequate covering and/or sideboards to prevent dust and spillage when loaded.
- Q. All proposed access roads leading to the excavation site shall intersect existing streets and roads at locations that have been duly approved by appropriate state or local officials, and in a manner that will not endanger the safety of highway users and local residents. The provisions of RSA 249:1318 (Highway Access) shall be adhered to by the applicant and shall be shown on the Excavation Plan.
- R. Permit approval shall be conditioned on compliance by the applicant with street and highway regulations promulgated by federal, state and local authorities.
- S. No excavation shall substantially damage any aquifer identified on mapping by the U.S. Geological Survey. The Regulator shall determine whether or not substantial damage to the aquifer will be incurred by considering the following criteria:
  - 1. The excavation shall not detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants.
  - 2. The excavation shall not cause a significant reduction in the long-term volume of water contained in the aquifer or in the storage capacity of the aquifer.

3. The Regulator may require that the applicant provide data or reports, prepared by a professional groundwater consultant, which assess the potential for aquifer damage that could be caused by the proposed excavation project.
- T. The applicable state statutes and regulations pertaining to forest practice and timber harvesting shall apply to the removal of vegetative cover at the excavation site.
- U. No processing machinery shall be erected or maintained on the lot within three hundred (300') feet of any property line.
- V. Excavation operations shall be set back at least twenty-five (25) feet from wetlands (as defined in this Ordinance), and the applicant must demonstrate that no sedimentation or drainage of the wetlands will occur as a result of the excavation. The Regulator shall have the authority to require greater wetlands setbacks in situations where the Regulator can demonstrate that the greater setback will be required in order to protect the wetlands from degradation due to the proposed excavation operation.
- W. For excavation projects which require a permit from the Water Supply and Pollution Control Division pursuant to RSA 485A:17, the provisions of that statute, and the rules adopted thereunder, shall supersede the provisions of this Section.
- X. Nothing herein contained shall be construed as to forbid the creation of a lake or pond, provided that adequate provision has been made for the runoff of water in such manner as will not damage or interfere with the use of any road, highway, or abutting property, and further provided that such lake or pond shall be adequately fenced.
- Y. Existing active excavation operations whose normal activities cease for more than one hundred and twenty (120) consecutive days shall leave the slopes in such condition that they conform to the provision of Section 1007, part A.

#### Section 1007 - Site Reclamation Standards

Within twelve (12) months after the expiration date of a permit issued under these regulations, or of the completion of any excavation, whichever occurs first, the owner of the excavated land shall have completed the reclamation of the areas affected by the excavation to meet each of the following minimum standards or when such excavation is not subject to a permit under these regulations pursuant to Section 1003, to meet each of the following express standards:

- A. No slope in soil material shall be left steeper than 2:1 (two horizontal feet for each one foot of vertical drop) unless it can be demonstrated by the applicant that a steeper grade can be adequately vegetated and stabilized. The required slope may be modified by the Planning Board where ledge rock necessitates steeper slopes, or to a lesser slope if necessary for soil stability or safety, or for reasonable reuse and development of the lot.

- B. Ground levels and grades shall be established as shown on the approved Reclamation Plan as soon as practical during site excavation, but not later than one (1) year after excavation has been completed.
- C. Except for exposed rock ledge, all areas which have been affected by the excavation or otherwise stripped of vegetation shall be spread with topsoil or stripings, if any, but in any case covered by soil capable of sustaining vegetation, and shall be planted with seedlings or grass suitable to prevent erosion. Areas visible from a public way, from which trees have been removed, shall be replanted with tree seedlings, set out in accordance with acceptable horticultural practices.
- D. All earth and vegetative debris, stumps, boulders, etc. resulting from the excavation shall be removed or otherwise lawfully disposed of.
- E. All slopes, except for exposed ledge, shall be graded to natural repose for the type of soil of which they are composed so as to control erosion or at a ratio of horizontal to vertical proposed by the owner and approved by the Regulator. Changes of slope shall not be abrupt, but shall blend with the surrounding terrain.
- F. The elimination of any standing bodies of water created in the excavation project as may constitute a hazard to health and safety, unless the Regulator shall specify different restoration.
- G. The topography of the land shall be left so that water draining from the site leaves the property at the original, natural drainage points and in the natural proportions of flow. For excavation projects which require a permit from the Water Supply and Pollution Control Division pursuant to RSA 485A:17, the provisions of that statute, and the rules adopted under it shall supersede this Part G as to areas of excavation sites covered thereby. The excavator shall file a copy of the permits issued under RSA 485A:17 with the Regulator.
- H. If deemed necessary by the Regulator, suitable trees or shrubs may be required to be planted elsewhere on the site in order to provide screening and natural beauty and to aid in erosion control. Such planted areas shall be protected from erosion during an appropriate establishment period by mulch and structural erosion control devices.
- I. Depending upon the proposed reuse of the affected area, the following criteria shall govern the depth of the final excavation:
  1. If the site is to be reused for building purposes, the minimal elevation of the bottom of the excavation shall be at least five (5') feet above the mean annual high water table, or it shall conform to the original grade prior to any excavation or disturbance of the earth.
  2. If the site is to be reused as a pond, the minimal elevation of the bottom of the excavation shall be five (5') feet below the mean annual high water table.

## Section 1008 - Incremental Reclamation

Except for excavation sites of operating stationary manufacturing plants, any excavated area of five (5) contiguous acres or more, which is depleted of commercial earth materials, excluding bedrock, or any excavation from which earth materials of sufficient weight or volume to be commercially useful have not been removed for a 2 year period, shall be reclaimed in accordance with the provisions of Section 1007 of these regulations, within twelve (12) months following such depletion or 2-year non-use, regardless of whether other excavation is occurring on adjacent land in contiguous ownership. Each operator, other than the operator of stationary manufacturing plants which are exempt from permit requirements pursuant to Section 1003, Part C, shall prepare and submit for the Regulator's record a reclamation plan for the affected land, including a timetable for reclamation of the depleted areas within the reclamation site.

## Section 1009 - Exceptions to Operational and Reclamation Standards

The Regulator, upon application and following a hearing held in accordance with the provisions of Section 1011 of these regulations, may grant an exception in writing to the standards contained in Sections 1006, 1007 and 1008 for good cause shown. The written decision shall state specifically what standards, if any, are being relaxed, and include reasonable alternative conditions or standards. The Regulator's decision on any request for such exception may be appealed in accordance with Section 1015.

## Section 1010 - Application for Amendment

When the scope of a project for which an excavation permit has been issued is proposed to be altered so as to affect either the size or location of the excavation, the rate of removal or the plan for reclamation, the owner shall submit an application for amendment of his excavation permit, which application shall be subject to approval in the same manner as provided for an excavation permit.

## Section 1011 - Hearing

- A. Prior to the Regulator approving or disapproving an application for an excavation permit or an application for an amended excavation permit, a public hearing shall be held within thirty (30) days of receipt of a completed application.
- B. A notice of the hearing shall be sent to all abutters and shall specify the grounds for the hearing as well as the date, time and place of the hearing.
- C. A legal notice of the hearing shall also be published in a newspaper of general circulation in the Town at least fourteen (14) days in advance of the hearing. The fourteen days shall not include the day of publication nor the day of the hearing, but shall include any Saturday, Sunday or legal holiday within said period.

- D. A notice of the hearing shall be sent by mail to the members of the Derry Conservation Commission.
- E. A legal notice shall also be posted in at least three (3) public places in Town.
- F. The cost of notifying the abutters and the cost of publishing the legal notice in the newspaper shall be paid by the applicant.
- G. Within twenty (20) days of said hearing, or any continuation thereof, the Regulator shall render a written decision approving or disapproving the application. If disapproved, the Regulator shall state the reasons for disapproval in writing.

#### Section 1012 - Issuance of Permit

- A. If, after the public hearing, the Regulator determines that the project for which the application was submitted is not prohibited by these regulations, and if the Regulator approves the application, the Regulator shall grant a permit to the applicant provided that, prior to issuing the permit, the Regulator shall require:
  - 1. The posting of a bond, with such surety as the Regulator shall reasonably determine, with the Town Treasurer in an amount as reasonably set by the Regulator based on the working size of the project (not including stockpile areas or areas already restored where excavation work is completed), to guarantee compliance with the terms of the permit. The bond shall not expire until eighteen (18) months following the end of the permit or any extension thereof.
  - 2. That any and all local, state or federal permits must have been obtained, as required, and that copies of said permits have been provided to the Regulator.
  - 3. The payment of the excavation permit fee as specified in Section 1016.
- B. A copy of the permit shall be prominently posted at the excavation site or the principal access thereto.
- C. The permit shall not be assignable or transferable without the prior written consent of the Regulator.
- D. The permit shall specify the date upon which it expires. The expiration date of all excavation permits issued by the Town of Derry shall be December 31 in the year in which they are issued.

- E. The Regulator may include in the permit such reasonable conditions as are consistent with the purpose of these regulations and may include requirements for a permit for excavation which are more stringent than the standards set forth in RSA 155E, including the provision of visual barriers to the excavation.
- F. The calling of a bond or surety which is found not to hold sufficient monies to restore the area does not, however, relieve the landowner of his obligation to comply with the reclamation provisions of these regulations. It shall be the responsibility of the Regulator to take whatever means are necessary to force compliance.

#### Section 1013 - Renewal of Permit

- A. All valid excavation permits issued by the Town of Derry shall expire on December 31 in the year in which they are issued.
- B. The Regulator may renew any existing permit following:
  1. The filing of a completed application for permit renewal with the Regulator by October 1. Said application shall be accompanied with the renewal fee as specified in Section 1016;
  2. Inspection of the excavation site by the Regulator by October 30 to check the operation and to order any necessary work to be completed by December 31 in order to be in compliance with the terms of the permit and these regulations;
  3. A determination by the Regulator that the work being performed on the site is consistent with that as shown on the approved excavation and/or reclamation plan(s) which served as the basis for the permit for which the renewal is being requested; and
  4. A public hearing on said renewal application as provided for in Section 1011.
- C. Should the Regulator, for any reason, deem that a renewal of the permit is not in the best interests of the Town of Derry, the Regulator shall notify the applicant in writing, by December 31, stating the reason(s) for denial, and shall refund the renewal fee.

#### Section 1014 - Bonding

The Regulator shall establish the amount of a performance bond prior to the issuance of the excavation permit. The bond amount shall be reasonably sufficient to guarantee compliance with the restoration in accordance with the provisions of Section 1007. The bond requirements shall be based on the acreage of the project or approved phases and the estimated per-acre restoration costs. The bond will be returned to the applicant when the restoration work has been completed and a final satisfactory site inspection has been conducted by the Regulator or its designee. The applicant shall pay for any bond reviews by the Town's designated engineer and/or Town Counsel, or any other professional service necessary to review the proposed excavation/reclamation plan.

### Section 1015 - Appeal

- A. If the Regulator disapproves or approves an application for an excavation permit or an application for an amended permit, any interested person affected by such decision may appeal to the Regulator for a rehearing on such decision or any matter determined thereby.
- B. The motion for rehearing shall fully specify every ground upon which it is alleged that the decision or order complained of is unlawful or unreasonable and said appeal shall be filed within ten (10) days of the date of the decision appealed from.
- C. The Regulator shall either grant or deny the request for rehearing within ten (10) days and, if the request is granted, a rehearing shall be scheduled within thirty (30) days.
- D. Any person affected by the Regulator's decision on a motion for rehearing to the Regulator may appeal in conformity with the procedures specified in RSA 677:415.

### Section 1016 - Fees

- A. In accordance with the provisions of RSA 155E:8, an excavation permit fee in the amount of Fifty Dollars (\$50) shall be payable to the Town of Derry prior to the issuance of a permit or a renewal permit.
- B. The Regulator may assess reasonable additional fees necessary to perform application plan review and the annual compliance review.

### Section 1017 - Enforcement

- A. The Regulator may suspend or revoke the permit of any person who has violated any provision of his/her permit or these regulations or made a material misstatement in the application upon which his/her permit was granted. Such suspension or revocation shall be subject to a motion for rehearing thereon and appeal in accordance with Section 1015.
- B. The Regulator shall issue cease and desist orders against any operator if he/she is found in violation of any of the terms of these regulations. Such orders shall remain in effect until the violation is corrected.
- C. Any cease and desist order issued by the Regulator shall take effect, for the purpose of these regulations, on the date it is issued, and shall be served by either certified mail or by a law enforcement officer.

- D. Fines, penalties, and remedies for violations of these regulations shall be as stated in RSA 676:15 and 676:17.
- E. To ascertain if there is compliance with these regulations, a permit issued hereunder or an order issued hereunder, the Regulator or its duly authorized agent may enter upon any land on which there is reason to believe an excavation is being conducted or has been conducted since August 24, 1979.

#### Section 1018 - Conflicting Provisions

- A. Where the provisions of these regulations are in conflict with other ordinances, regulations, or laws, the more stringent shall apply.
- B. Nothing in these regulations shall be deemed to supersede or preempt applicable environmental standards or permit requirements contained in state laws, and no exemption under these regulations shall be construed as an exemption from any state statute.

#### Section 1019 - Waiver

The Regulator, upon application and following a hearing, may grant a waiver, in writing, to the standards contained in these regulations for good cause shown except as prohibited by RSA 155E. The written decision shall state specifically what standards, if any, are being relaxed and include reasonable alternatives.

## Section 1102 - Signs in Residential Districts

Signs or other advertising devices in Residential Districts shall be permitted as follows:

- A. Name and address signs not to exceed two (2) square feet in area.
- B. One sign not more than three (3) square feet in area providing information about an approved home occupation business.
- C. One sign identifying a multi-family project provided it is not more than twenty (20) square feet in area.
- D. One sign in connection with a lawful non-conforming use provided it is not more than twenty (20) square feet in area.
- E. One "For Sale" or "For Rent" sign provided that it is not more than six (6) square feet in area.
- F. Subdivision signs advertising the sale of residential lots provided that they are not more than ten (10) square feet in area.
- G. No sign shall project beyond a lot line. Signs larger than six (6) square feet shall be set back at least ten (10') feet from the front lot line or public way.

## Section 1103 - Signs in Business and Industrial Districts

Signs or other advertising devices in Business or Industrial Districts shall be permitted as follows:

- A. Signs as permitted in the Residential Districts.
- B. A maximum of three (3) signs for a business or industrial establishment whether attached to a building or free standing. Signs not mounted on buildings, or which are mounted perpendicular to a building, shall be ten (10) feet from the lot line or public way.
- C. For commercial use, the aggregate area of all signs shall not exceed two (2) square feet for each linear foot of street frontage. This provision does not apply to shopping malls.
- D. For industrial uses in solely industrial districts, the aggregate area of all signs shall not exceed four (4) square feet for each linear foot of street frontage. For industrial uses in multi-use districts, the signs shall comply to the provisions for those buildings or the building actually used for industrial purposes.

## ARTICLE 1200 - NON-CONFORMING USES OF LAND AND STRUCTURES

### Section 1201 - Intent

Within the districts established by this Ordinance, or amendments that later may be adopted, there exist lots, structures and uses of lots and structures which were lawful before this Ordinance was enacted or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendment. It is the intent of this Ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that non-conformities shall not be enlarged upon, extended or expanded, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been carried out diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

### Section 1202 - Non-Conforming Lots of Record

In any district in which single family detached dwellings are permitted, a single family detached dwelling and customary accessory buildings may be erected on a single lot of record existing on the effective date of adoption or amendment of this Ordinance, subject to the limitations of subsection 302.1 and the following provisions:

- A. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located.
- B. If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of the adoption or amendment of this Ordinance, and if all or part of the lots do not meet the requirements established for lot width or area, the lands involved shall be considered to be an undivided parcel for zoning purposes, and no portion of said parcel shall be used or sold in any manner which diminishes compliance with the lot width and area requirements of this Ordinance, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this Ordinance.

### Section 1203 - Non-Conforming Use of Land

Where, at the time of passage of this Ordinance, lawful use of land exists which would not be permitted by the regulations imposed by this Ordinance, the use may be continued as long as it remains otherwise lawful, provided that:

- A. No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied by such use on the effective date of adoption or amendment of this Ordinance;
- B. No such non-conforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use on the effective date of the adoption or amendment of this Ordinance;
- C. If any such non-conforming use of land ceases for twelve (12) months or more, any subsequent use of such land shall conform to the regulations specified by this Ordinance for the district in which the land is located.
- D. This section shall not be deemed to apply to residential lots described in Section 302.2.

### Section 1204 - Non-Conforming Structures

Where a lawful structure exists on the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued as long as it remains otherwise lawful, subject to the following provisions:

- A. No such non-conforming structure may be enlarged or altered in any way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity.
- B. Should such non-conforming structure or non-conforming portion of the structure be abandoned for twelve (12) months or more, or damaged or destroyed by fire or other cause or its use diminished by Eminent Domain taking to the extent of more than fifty (50%) percent of its replacement cost at the time of the damage or destruction or taking, and a building permit for such reconstruction, repair or replacement is not applied for within six (6) months after such event, such structure may not be reconstructed except in conformity with the provisions of this Ordinance.
- C. Should such structure be moved, for any reason, for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.
- D. This section shall not be deemed to apply to residential lots described in Section 302.2.

Section 1301 - Short Title

This ordinance shall be known and may be cited as the Growth Management Ordinance (GMO) of the Town of Derry, New Hampshire.

Section 1302 - Authority

The Growth Management Ordinance (GMO) is enacted pursuant to the authority granted under RSA 674:16, 674:17, 674:21, 674:21-a and 674:22.

Section 1303 - General Considerations: Policy Objectives and Purposes

The Town of Derry has been experiencing unprecedented and rapid growth with respect to its population, housing, land development and utilization of resources since the mid 1980's. In real terms, Derry's population growth has far exceeded other communities in Rockingham County, especially since 1980. Derry's population grew by 10,700 persons from 1980 to 1990, an increase of over fifty (50%) percent during this period. Londonderry, its neighbor, grew by 6200 persons in the same period. However, towns in the remainder of the County experienced significantly lower growth in real terms. Housing starts in a similar period show that from 1980 to 1993 Derry constructed over 6,000 housing units, where Londonderry constructed less than 3,000 and other surrounding towns far fewer.

This period of rapid growth threatens to continue unabated with its attendant demands on public services and facilities. Transportation, water, sewerage, schools, parks and recreation, drainage and other public facilities and requirements have been and are being constructed to meet the needs of the town's growing population; but the town has been unable to provide these services and facilities at a pace which will keep abreast of the ever-growing public need. Derry has taxed itself to the very limit, having one of the highest property tax rates in the State of New Hampshire and certainly the highest among its neighbors. Derry's property tax rate in 1995 was \$41.41 per \$1,000.00, an increase of almost thirty-nine (39%) percent from 1990. In 1997, Derry's tax rate was the highest of the surrounding communities. Derry is faced with a continuing additional demand for services, including a requirement to build additional school facilities so as to accommodate its existing student population in accordance with State of New Hampshire mandates. Future residential growth will increase the demands on Derry's crowded schools and overtaxed population.

Derry's major transportation arteries are at full capacity and, in most cases, at levels of service indicative of a failure condition. Some of these arteries are State highways and their improvement is not prioritized in the State's ten year transportation plan. All of Derry's major arteries, including compact roads and town arterial streets are severely impacted by the growth of surrounding communities in addition to Derry's own astounding growth. Route 102, Derry's

main street, crosses Interstate 93 at one of its major junctions, also crossing Route 28 and the Route 28 By-pass at major intersections, one of which is a rotary located in a Historic District. These roads form a north-south and east-west transportation corridor providing access for most of the surrounding communities to Interstate 93 and to the Boston commuter market. Accordingly, Derry is faced with extremely expensive highway improvements resulting from impacts both within and without the community. These must be funded almost exclusively out of Derry's already extremely high tax rate.

Faced with the physical, social and fiscal problems caused by the rapid and unprecedented growth, the Town of Derry has adopted an updated comprehensive Master Plan to guide its future development; and it has adopted a revised zoning map and a capital improvement program so as to provide for a balance of the orderly, adequate, and economical development of the community. In doing so, Derry has considered and sought to balance its future residential, commercial, industrial, and public land uses with the availability of community facilities, including transportation, water, sewerage, schools, parks and recreation, drainage and other public facilities.

In adopting these policies, Derry has considered local and regional development needs, recognizing in the process that over 50% of its housing units are multi-family or mobile home units. These provide low and moderate income housing opportunities far in excess of its surrounding communities. At least 1700 of these low and moderate income units have been constructed since 1980. Derry has also made elderly housing one of the preferred uses in its downtown redevelopment plan so as to provide additional, properly located elderly housing.

This Growth Management Ordinance is adopted to promote and ensure the orderly development of land within the Town of Derry, to promote public health, safety, and welfare of its residents, and for the following specific purposes:

- A. To manage growth to ensure its compatibility with the revised Master Plan for the Town of Derry. The Master Plan has taken a long-term view of Derry's future and its land use patterns. In doing so the Planning Board has determined a long term usage pattern for all remaining developable land in Derry, anticipating a full build-out population of 45,000 residents, as compared to the current Derry population of approximately 32,000 people.
- B. To regulate and control the timing of development consistent with the Master Plan and capital improvements program and provide a means to temporarily regulate the number of building permits issued during periods of excessive development pressure.
- C. To assess and balance community development needs. The Planning Board has considered the necessity to immediately address the imbalance of Derry's tax base, exacerbated by the State mandated 1993 revaluation which reduced Derry's net valuation by approximately one-third. The Planning Board finds that the resulting increase in an already heavy burden imposed on Derry's residential taxpayers requires immediate redress. To meet this imbalance, the Planning Board has recommended adoption of a thirty year Capital Improvement Plan upon which the Growth Management features of this Ordinance are based.
- D. To consider past and future regional development conditions.

- E. To ensure that essential municipal services, such as schools, transportation/roads, sewerage and water services, are available and will have sufficient capacity and quantity to accommodate new development. Derry's Planning Board has considered, in view of its findings as to the desirable land usage in Derry and its ultimate population estimate of 45,000 people, the minimum long term capital needs of Derry in the form of a Capital Improvement Program. The resultant Capital Improvement Plan balances Derry's ability to pay with the needs anticipated for essential public facilities to service the build-out population.
- F. To balance Derry's long term capital needs, the impact of future development and Derry's ability to pay for the essential services this development requires. The Planning Board considers that Derry taxpayers are simply unable to support the rate of residential growth that Derry has sustained in the past. It has also considered the impact imposed upon Derry by development in surrounding communities and its already strained ability to absorb ever increasing educational costs with its limited tax base.
- G. To implement a residential unit allocation system to regulate the rate of residential growth commensurate with the Town's ability to provide adequate public facilities and services, based upon the goals, policies and objectives set forth in the Capital Improvement and Master Plans.
- H. To prevent deterioration of public facility service levels, environmental degradation, and potential land use conflicts.

#### Section 1304 - Temporary Residential Building Permit Limitation.

The Planning Board hereby finds that Derry's short term fiscal situation requires that a temporary building permit limitation be established. Derry's schools have been found to be overcrowded and inadequate for its existing student population. Seven Hundred students are now being educated in temporary or portable facilities. The State has required Derry to construct new school facilities anticipated to cost \$15,000,000.00. These facilities are required in spite of the housing units shall be issued in any year until the expiration of this temporary building permit limitation.

1. Building permits shall be allocated based upon the following classes of priority:
  - (i) building permits for subdivisions or developments approved and otherwise eligible for the Basic Development Right pursuant to Section 1306(A) below.
  - (ii) other building permit applications, if any.
2. Lots which are exempted pursuant to RSA 674:39 and 676:12(V), or which are covered under legal settlement agreements with the Town pertaining to their status as vested lots, shall not be affected by this provision, nor shall building lots legally existing as of the date of first posting of this Ordinance for public hearing, June 5, 1998, which otherwise conform to Derry's Zoning Ordinance

and as to which a single residential unit building permit is applied for. The provisions of this section shall not apply to A Housing for Older Persons under RSA 354-A:15, and Supported Residential Care Facilities under RSA151 and NH Code of Administrative Rules He-P 805.

3. For purposes of establishing allocation priorities, permits shall be issued quarterly, commencing on the 1st days of July, October, January and April in each fiscal year on the basis of a prorata allocation of then available permits, on a first come, first serve basis until exhausted. All permits available in any quarter shall be available for issuance as of the first day of such quarter. Any unused building permits in any quarter shall be included in the next quarter's allocation. Authorized but unissued building permits in any year shall be carried forward and be additional to the next fiscal year's building permit allocation.
4. Permits shall be allocated prorata based upon the number of applicants in each class, as defined in Section 1304 (A) (1) above, up to the maximum allowable permits in any quarter. Each eligible applicant shall receive at least one (1) building permit until the respective allocation is exhausted. If the relevant allocation would be exhausted, the available permits shall be allocated within each class, based upon the date and time of application filing, until exhausted. Eligible applicants who applied for building permits and were unable to receive at least one (1) permit in each allocation, shall receive priority over other applicants in the class for the next occurring allocation.

B. This permit limitation provision shall expire in four years; provided, however, that the Planning Board shall annually review and act upon this limitation as described in Section 1304-C below; and further provided that the Planning Board may re-impose such building permit limitation for a period(s) not to exceed one year, if it determines that conditions are such that prospective growth, based upon the number of approved but unbuilt residential lots that are then available to be built, and/or the anticipated applications for additional residential building lots will cause conditions which threaten a short-term and significant disruption of the Town's Growth Management Plan. Conditions which the Planning Board may consider are:

1. Availability of excess school capacity of ten (10%) percent or less.
2. Projected residential growth, based on building permits issued, which would exceed five (5%) percent over the previous year for two (2) years in a row or seven (7%) percent in any year.
3. Conditions of failure as determined by the Public Works Director or the State of New Hampshire Department of Transportation (NH-DOT) of the Town's major arterial intersections:

Ross' Corner	Crystal Avenue and Broadway
Shute's Corner	Route 93 Exit 4 Interchange
Webster's Corner	Intersection of Fordway Extension and Route 102
Route 102 Rotary	Intersection of Route 28 By-Pass and Tsienneto Rd
	Intersection of Tsienneto Road and Route 102

C. Any permit limitation imposed shall be reviewed annually in April of each year starting with April of the year following the adoption of this Ordinance by the Planning Board which shall consider whether (i) based on a report of the Derry School District that sufficient school capacity is available with reserve or excess capacity sufficient to meet the projected three (3) year growth in student population, considering building permits eligible to be issued pursuant to exemptions contained herein plus the number equal to the maximum number of permits allowed under this Section (1304); (ii) based upon a report of the Town's Public Works Director the conditions of failure specified in Subsection B(3) above have been alleviated or will be alleviated within the ensuing twelve months; and (iii) residential growth for the previous two years did not exceed five (5%) percent over the previous year for two years in a row or seven (7%) percent in any year. In the event the Planning Board shall find that (a) condition (i) above and either condition (ii) or (iii) above have been met or (b) they are satisfied that the improvements specified in the Capital Improvement Program for the next ensuing three years will be adequate to satisfy condition (i) above and provide reasonable relief from the conditions set forth in (ii) and (iii) above so as to avoid dangers to the health, safety or welfare of the community, the Planning Board shall, in the case of (a) above, or may, in the case of a finding under (b) above, suspend the permit limitation effective on the first day of the month following the finding, or increase the number of permits to be issued for the next succeeding (12) twelve month period, as conditions warrant. Annual periods described in this section shall run from July 1 to June 30.

### Section 1305 - Residential Development Special Permit System.

#### A. General Provisions

The following section describes the procedure by which special permits for residential development shall be applied for and may be granted by the Planning Board. The special permit application and issuance system described in this section shall determine if and when special permits so issued may be exercisable, based on the availability of adequate public facilities.

1. A residential developer shall be required to obtain a special permit from the Planning Board prior to the issuance of any building permit for a new residential unit in any subdivision or site plan proposed before the Planning Board.
2. The provisions of this section shall not be applicable to residential lots, site plans or subdivision plans which are exempted pursuant to RSA 674:39 and 676:12(V) or which are covered under legal settlement agreements with the Town pertaining to their status as vested lots; nor shall building lots legally existing on the date of first posting of this Ordinance for public hearing, June 5, 1998, which otherwise conform to Derry's Zoning Ordinance, and as to which a single residential unit building permit is applied for, be subject to the provisions of this section. The provisions of this section shall not apply to Housing for Older Persons under RSA 354-A:15, and Supported Residential Care Facilities under RSA 151 and NH Code of Administrative Rules He-P 805.

## B. Procedure for Special Permit

1. Application. Residential subdivision or development applicants shall be required to submit an application for special permit to the Town's Planning Director in such detail as shall be set forth in regulations established by the Planning Board, including a map showing the location of all abutting land holdings of the applicant or by entities owned or controlled by the applicant and the extent of the land proposed for development. The Planning Director shall review the application with respect to all of the standards set forth in Section 1305(C), as to the availability of municipal services and facilities and as to projected improvements scheduled to be completed in the Capital Improvements Plan of the Town. The Planning Director may request reports from appropriate town, or regional agencies, boards or officials, as may be desirable or as required by Planning Board regulations in force and applicable to the application. Within twenty (20) days of the submission of an application otherwise meeting the application requirements of Derry's Land Development Control Regulation, the Planning Director shall notify the Planning Board and the applicant as to his finding as to the acceptability of the application under this section and as to whether and how many of the development points the proposal is presently eligible to claim.
2. The Planning Director shall also proceed to notice the application for public hearing at the first regular meeting of the Planning Board not less than ten (10) days after the submission of the written report referred to in Subsection (1). Such public hearing shall be conducted after notice in accordance with RSA 676:4 I (d). Applications shall be deemed completed applications within the meaning of RSA 676:4 I (b) only when they have conformed to all the requirements of this Section and the Derry Land Development Control Regulation application procedure.
3. The Planning Board shall, within thirty (30) days after the report is submitted by the Planning Director, determine whether to accept jurisdiction of the plan pursuant to RSA 676:4 I (b). The number and designation of any lots approved in such special permit(s) to be issued shall be determined by the Planning Board in conjunction with of its subdivision/site plan review conducted pursuant to RSA 676:4, et seq.

## C. Qualification for Special Permit through Development Points

1. Except as otherwise set forth in Section 1306,A, no special permits granted by the Planning Board under this section shall be exercisable unless a proposed residential development receives the following number of development points: LDR-8 points, LMDR-8 points, MDR-11 points and all other districts-12 points; provided that the proposed development in any district must receive at least one (1) development point in each of the following categories: transportation, school facilities, police protection and fire protection facilities. For the definitions of zoning districts (LDR, LMDR and MDR, etc.), see Section 500 of Derry's Zoning Ordinance.

2. Development points shall be awarded according to the following categories:

No application shall receive points in more than one sub-category of each part of this subsection 1305(C)(2).

**a. Sewer Facilities.**

(1)	Municipal sewer system available and municipal sewer treatment facility has 21% or greater reserve capacity	2 points
(2)	Approved septic system available with alternate location on Premises	1 point
(3)	All others	0 points

**b. Water Supply Facilities**

(1)	Municipal water supply system connection available	2 points
(2)	Public utility water system pre-existing this Ordinance is available /	1 point
(3)	Existing or proposed approved well on lot	1 point
(4)	All others	0 points

**c. Drainage Facilities.** Percentage of required drainage capacity available. All calculations based upon historic 100 year storm event.

(1)	90% to 100% on-site storm water detention no adverse downstream impact	1 point
(2)	Less than 90% on-site storm water detention or adverse downstream impact	0 points

**d. Transportation Facilities.**

(1)	Highway infrastructure improvements for roads or intersections impacted by this project installed or to be installed within one (1) year	1 point
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Impacted roads are those roads which form one of the following intersections:

Ross' Corner	Crystal Avenue and Broadway
Shute's Corner	Route 93 - Exit 4 Interchange
Webster's Corner	Intersection of Fordway Extension and Route 102
Route 102 Rotary	Intersection of Route 28 By-Pass and Tsienneto Rd
	Intersection of Tsienneto Road and Route 102

(2) Any negative impact to either the intersections listed in Subsection (d)(1) or intersections with arterial or collector streets identified by the Planning Board and/or its consultants as in failure and not mitigated by improvements set forth in Capital Improvement Plan or by the applicant. Arterial or collector streets are those designated as such in the Derry Master Plan. 0 points

(3) All other 0 points

**e. School Facilities.**

(1) Adequate school facilities available and having capacity for additional students 1 point

(2) All other 0 points

Adequate school facilities are deemed to be those facilities defined by the New Hampshire Legislature or other authority designated to do so, and approved, if required, by the New Hampshire court of competent jurisdiction, which meet the minimum standards of adequacy established by such definition. No school facilities within the jurisdiction of the Derry School Board shall be deemed adequate unless conforming to such standard without the use of temporary or portable facilities. Notwithstanding the foregoing, school facilities are not adequate if the available student capacity of any such facility, which otherwise meets the standard set forth in the preceding two sentences, is not sufficient to meet or exceed the student enrollment projected for the applicant's development when combined with student enrollment growth projected from available statistical data for existing and approved and unbuilt residential housing, including those units eligible for building permits under Section 1306(A).

**f. Recreation Facilities.**

Improved park, playground or play field, including public school site or conservation easement and/or dedicated open space land of one acre or more, suitable for recreational use (to include a playground or play field) for adults and children, dedicated to and accessible from the subdivision or development to which it is appurtenant or which it abuts; provided, however, that private facilities are owned and maintained by Associations of lot or unit owners whose responsibilities are set forth in documentation deemed adequate by the Planning Board.

(1)	Within or abutting the subdivision or development	2 points
(2)	Within one-half (2) mile of the intersection of the subdivision or development street with an existing Town road	1 point
(3)	Farther than one-half (2) mile	0 points

**g. Fire Protection Facilities:**

(1)	Within four (4) minutes response time from the closest municipal fire station	
(a)	for High Hazard occupancies	1 point
(b)	for Medium and Low Hazard occupancies	2 points
(2)	Within five (5) minutes response time from the closest municipal fire station	
(a)	for High Hazard occupancies	0 points
(b)	for Medium Hazard and Low Hazard occupancies	1 point
(3)	Within six (6) minutes response time from the closest municipal fire station	
(a)	for High Hazard occupancies	0 points
(b)	for Medium Hazard occupancies	0 points
(c)	for Low Hazard occupancies	1 point
(4)	For any occupancy within 1,000 feet of a Fire Department approved hydrant connected to the municipal water supply system or of an approved Fire suppression storage facility	1 point

(5) For any occupancy with access to appropriate fire suppression water storage and with installation of Residential sprinklers compliant with NFPA 13 R and '13 D or within 1,000 feet of a fire suppression storage cistern compliant with NFPA '1231 1 point

The following definitions pertain to this Fire Protection Facilities Subsection:

High Hazard occupancy - an occupancy with any of the following characteristics:

1. Occupant load of ten (10) or more persons who may be physically impaired.
2. Buildings with more than 10,000 square feet on any floor.
3. Buildings with three or more stories in height.

Medium Hazard occupancy - an occupancy with any of the following characteristics:

1. Occupant load of ten (10) or more persons who are not physically impaired.
2. Buildings with more than 2,500 square feet but less than 10,000 square feet on any floor.

Low Hazard occupancy - an occupancy with any of the following characteristics:

1. Occupant load of less than ten (10) persons.
2. Buildings with less than 2,500 square feet on any floor.

**h. Police Protection**

Number of Police Officers per 1,000 residents. Minimum of one point is required.

(1)	1.75 or greater	2 points
(2)	1.50 to 1.74	1 point
(3)	1.49 or less	0 points

3. Based upon the density of development allowed pursuant to Derry's Land Development Control Regulation and the Derry Zoning Ordinance, the Planning Board shall determine whether to approve each application for special permit under its subdivision or site plan regulations. In connection with any such application, the Planning Board shall issue a finding specifying the number of dwelling units which it has approved in issuing the special permit. If any subdivision or site plan application does not attain the required number of development points at the time of such approval, however, no building permits may be issued on account of such approval except as allocable to the applicant's Basic Development Right described in Section 1306(A) below, subject to the limitations otherwise set forth as to the timing and number of such building permit issuance in Sections 1304 and 1306(A), below.

## Section 1306 - Basic Development Rights and Additional Development Rights.

Special permits shall be exercised in accordance with the following:

A. Thirty (30%) percent of the residential lots or units approved in the special permit pursuant to Section 1305 (C)(2) (but not to exceed twenty-one (21) lots or units) shall be deemed to be units for which the Applicant shall be entitled to Basic Development Right. The Planning Board may designate which lot(s) shall be allocated to the Basic Development Right so as to provide for orderly development of the project and to minimize its impact upon municipal facilities or services. In case computations hereunder result in fractional units, the number of units shall be rounded to the next lowest whole number.

Such Basic Development Right shall entitle the applicant to building permits for up to one-third of the units covered by such Basic Development Right in the year of plan approval or five (5) units, whichever is greater. The remainder of such Basic Development Right building permits shall be issued in equal installments in each of the next two succeeding years until the Basic Development Right is exhausted (based upon the Town's fiscal year). Such Basic Development Right may only be exercised if the subdivision or site plan meets all conditions of approval, including the posting of performance bond or other security as required by law or under the Derry Land Development Control Regulations. The Planning Board, in establishing the performance bond or other security, may provide for phasing of such security in conjunction with the timing of the issuance of building permits under either this Basic Development Right or the Additional Development Right set forth in Subsection 1306-B. Basic Development Right building permits not applied for during such period may be subsequently issued in any year thereafter unless the provisions of Section 1304 are applicable.

The applicant's Basic Development Right shall be subject to and further limited by the provisions of any Temporary Permit Limitation set forth in Section 1304 herein and the right to exercise such Basic Development Right shall be extended in such case until exhausted or until any Temporary Permit Limitation has expired.

B. The balance of the applicant's special permit shall be allocated to the applicant's Additional Development Right. Such right shall entitle the applicant to a building permit for each such residential unit only at such time as the development shall have the required number of points under Section 1305(C)(2). As part of such Planning Board approval of the special permit, the Planning Board shall determine the year in which such additional development right shall be exercisable, based upon its finding as to that year the development would attain the required number of points under Section 1305(C)(2). In making such determination the Planning Board shall consider the scheduled completion date of those capital improvements which it determines would be required in order to attain the requisite number of points as set forth in the Capital Improvement Plan then in effect. In the event any such capital improvements are completed in advance of the time schedule set forth in such Capital Improvement Plan, the Planning Board shall, upon request, review its finding and, if the requisite points are

then available, advance the date when the additional development right shall be exercisable. Such Additional Development Rights shall be vested at the time of Planning Board approval pursuant to Section 1305(C)(2) herein but shall not be exercisable until the time set forth above. The Planning Board may, as part of such approval, require the phasing of such Additional Development Rights at the time of exercise, depending upon the scope of the project and other off-site impacts or improvements required to accommodate the project. Such phasing may be required over a maximum three (3) year period in the discretion of the Planning Board. Nothing herein shall limit the authority of the Planning Board contained in Section 1304 to limit the issuance of building permits available under this subsection in times where temporary residential permit limitations under Section 1304 above are in force.

### Section 1307 - Capital Improvements Program.

#### A. Preparation and Function.

The Planning Board has prepared a long-term Capital Improvements Program of municipal capital improvements based on recommendations submitted by the departments and agencies of the Town, taking into account public facility needs indicated by the prospective development shown in the Master Plan of the Town and its Land Development Control Regulations in force and applicable. Such Capital Improvement Program has been based upon community facilities projected to meet the needs of Derry's build-out population as set forth in its Master Plan and will be submitted to the Town Council contemporaneously with this Ordinance.

To the extent that the Planning Board is required to make findings as to the adequacy of municipal facilities pursuant to Sections 1304 and 1305 herein, the Planning Board is hereby authorized to make such findings based upon the long-term Capital Improvement Plan adopted with this Growth Management Ordinance. Such long-term Capital Improvement Plan is a good-faith estimate of Derry's present and future capital needs and it has been adopted with due regard for Derry's projected ability to pay for such capital improvements.

#### B. Authority.

The Planning Board is hereby empowered to prepare and amend such Capital Improvement Plan on an on-going basis pursuant to RSA 674:5-7. Such authority shall, and it hereby does include, all powers necessary to perform such function.

#### C. Review and Report.

The Planning Board shall review the long-term Capital Improvement Plan described in Subsection A on an annual basis and make such amendment or update and report thereon as shall be appropriate. Such amendment or update and report shall be communicated to the Town Council and Town Administrator on or before January 1 of each year so as to enable the Town Administrator and the Town Council to consider the Planning Board's recommendations, if any, in the Town's annual budget-setting proceedings.

#### D. Effect on Growth Management Ordinance.

This Growth Management Ordinance is enacted pursuant to the revised Master Plan and Capital Improvements Programs that have been prepared by the Planning Board. The Growth Management Ordinance is subject to ongoing implementation, modification and amendment of the Capital Improvement Program, as well as any amendments to the Master Plan, and shall be reviewed at least each fourth (4th) year after its inception to determine whether changed conditions require its alteration. If the Capital Improvement Program is modified or altered, such modification shall apply to any applications for site plan or subdivision approval submitted after the date such modification is adopted by the Planning Board, but shall not affect plans which the Planning Board has approved or accepted jurisdiction of pursuant to RSA 676:4(l)(b) as of the date of the adoption of such modification.

#### Section 1308 - Effect of Approval of Special Permit(s) by Planning Board.

##### A. Vested Approval of Special Permit(s).

If the Planning Board shall issue an approval of the application for residential subdivision/site plan approval, the approval shall vest a present right for the residential developer to proceed with residential development of the land to the extent of the applicant's Basic Development Right in the year of subdivision approval, subject to the time limitations contained in Sections 1304 and 1306. Such approval shall also vest a right for the residential developer to proceed with residential development as to the Additional Development Right in such year as the proposed development meets or is projected to meet the required development point value set forth in Section 1305 (c) (1) and (2) above, as determined by the finding required in Section 1306(B) above.

##### B. Developer Options.

For earlier or immediate development, a developer may advance the date of exercise of the Additional Development Right by providing such public improvements as will bring the development within the required number of points required under Section 1305 (c) (1) and (2) above. Such improvements shall be secured by surety sufficient to cover the cost of the proposed improvement, the form, sufficiency and amount of which surety shall be determined by the Planning Board after recommendation from the Planning Director, the Public Works Director and approval as to form by the Town's legal counsel. The required improvements shall be in such form and done in such time and manner as the Planning Board shall approve.

##### C. Special Permits Assignable.

All approved special permits vesting a present right to future development shall be fully assignable (as an appurtenance to the property to which they pertain) without restriction, except the right so assigned shall be subject to the conditions of the approval and of this Article 1300; provided also that any previously posted security for any required improvements is adequate and maintained by the assignee to the satisfaction of the Planning Board.

#### D. Alternative Uses Permitted.

Nothing herein contained shall prevent any land from being immediately used for non-residential purposes if authorized by the Zoning Ordinance.

#### Section 1309 - Relief from Provisions.

Appeal of Decisions.

Appeal of decisions of the Planning Board under this Article 1300 shall be made to Superior Court pursuant to RSA 677:15.

#### Section 1310 - Fees

The fee for each special permit application pursuant to this Ordinance to the Planning Board shall be as set forth in the Land Development Control Regulations, payable at the time of said application, and is not refundable.

#### Section 1311 - Severability

The invalidity or unenforceability of any section or part of this Growth Management Ordinance shall not invalidate the remainder thereof, which shall in any such case remain in full force.

#### Section 1312 - Implementing Regulations

To the extent deemed appropriate, the Planning Board may adopt regulations implementing this Ordinance pursuant to RSA 674:36, RSA 674:44, RSA 676:4 i (a) and (b), and RSA 676:4 II and III.

#### Section 1313 - Effective Date

THIS ORDINANCE SHALL BECOME EFFECTIVE THIRTY (30) DAYS AFTER PASSAGE.

## ARTICLE 1400 - ZONING BOARD OF ADJUSTMENT

### Section 1401 - Appointment

The Town Council shall appoint a Board of Adjustment pursuant to the provisions of RSA 673:1.

### Section 1402 - Members and Terms

The Board of Adjustment shall consist of five (5) members, whose terms shall be for three (3) years. When the Board is first organized, appointments shall be staggered so that no more than two (2) appointments occur annually, except when required to fill vacancies. Said members shall be removable by the appointing authority upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term.

### Section 1403 - Rules of Procedure, Meetings and Minutes

The Board shall adopt rules in accordance with the provisions of RSA 676:1. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. Such Chairman, or in his absence the Acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question; and if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

### Section 1404 - Appeals

- A. Appeals to the Board of Adjustment concerning interpretation or administration of this Ordinance may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative official. Such appeal shall be taken within a reasonable time as prescribed by the rules of the Board by filing with the administrative official from whom the appeal is taken and with the Board, a notice of appeal specifying the grounds thereof. The administrative official from whom the appeal is taken shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken.
- B. An appeal stays all proceedings under the action appealed from, unless the administrative official from whom the appeal was taken certifies to the Board of Adjustment, after notice of appeal shall have been filed with him, that by reason of the facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by the Superior Court on notice to the administrative official from whom the appeal is taken on due cause shown.

C. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give the public notice thereof as well as notice to parties in interest, and decide the same within a reasonable time. Upon hearing any party may appear in person or by agent or attorney.

### Section 1405 - Powers

The Board of Adjustment shall have the following powers:

- A. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement hereof or of any ordinance adopted pursuant to RSA 674:16.
- B. To authorize upon appeal in specific cases such variance from the terms of this Ordinance as will not be contrary to the public interest if, owing to special conditions, a literal enforcement of the provisions of this Ordinance will result in hardship, and so that the spirit of this Ordinance shall be observed and substantial justice done.
- C. In exercising the above-mentioned powers, such Board may, in conformity with the provision hereof, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.
- D. The Board of Adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of this Ordinance. All special exceptions shall be made in harmony with the general purpose and intent of this Ordinance and shall be in accordance with the general or specific rules contained herein.
- E. The concurring vote of three members of the Board shall be necessary to reverse any action of such administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance.

### Section 1406 - Disqualification of Member

- A. No member of the Board of Adjustment shall participate in deciding or shall sit upon the hearing of any question which the Board is to decide in a judicial capacity if that member has a direct personal or pecuniary interest in the outcome which differs from the interest of other citizens, or if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law. Reasons for disqualification do not include exemption from service as a juror or knowledge of the facts involved gained in the performance of the member's official duties.

- B. When uncertainty arises as to the application of Part A, above, to a Board member in particular circumstances, the Board shall, upon the request of that member or another member of the Board, vote on the question of whether that member should be disqualified. Any such request and vote shall be made prior to, or at the commencement of, any required public hearing. Such vote shall be advisory and non-binding, and may not be requested by persons other than Board members, except as provided by local ordinance or by a procedural rule adopted under RSA 676:1.
- C. If a member shall be disqualified or unable to act in a particular case pending before the Board, the Chairman shall designate an alternate to act in her/his place.

#### Section 1407 - Motion for Rehearing

- A. Within twenty (20) days after any order or decision of the Zoning Board of Adjustment, the Town Council, any party to the action or proceedings, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion for rehearing the ground therefor; and the Board of Adjustment may grant such rehearing if, in its opinion, good reason therefor is stated in the motion.
- B. A motion for rehearing made under Part A of this Section shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the Board of Adjustment shall be taken unless the appellant shall have made application for rehearing as provided for in Part A of this Section; and, when such application shall have been made, no ground not set forth in the application shall be urged, relied on, or given any consideration by a Court unless the Court, for good cause shown, shall allow the appellant to specify additional grounds.
- C. Upon the filing of a motion for rehearing, the Board of Adjustment shall, within ten (10) days, either grant or deny the application, or suspend the order or decision complained of pending further consideration. Any order of suspension may be upon such terms and conditions as the Board of Adjustment may prescribe.

#### Section 1408 - Appeal from Decision on Motion for Rehearing

Any person aggrieved by any order or decision of the Board of Adjustment may apply to the Superior Court within thirty (30) days after the action complained of has been recorded, by sworn petition, setting forth that such decision or order is illegal or unreasonable, in whole or in part, and specifying the grounds upon which the same is claimed to be illegal or unreasonable.

- A. Burden of Proof - In an appeal to the Court, the burden of proof shall be upon the party seeking to set aside any order or decision of the Zoning Board of Adjustment to show that the order or decision is unlawful or unreasonable. All findings of the Zoning Board of Adjustment upon all facts properly before the Court shall be *prima facie* lawful and reasonable. The order or decision appealed from shall not be set aside or vacated, except for errors of law, unless the Court is persuaded by the

balance of probabilities, on the evidence before it, that said order or decision is unreasonable.

- B. Certifying Record - An order of the Court to send up the record may be complied with by filing either the original papers or duly certified copies thereof, or of such portions thereof, as the order may specify, together with a certified statement of such other facts as show the grounds of the action appealed from.
- C. Hearing - The Court may take evidence, or appoint a referee to take such evidence, as it may direct and report the same with his findings of fact and conclusion of law.
- D. Restraining Order - The filing of an appeal shall not stay proceedings upon the decision appealed from, but the Court may, on application and notice, for good cause shown, grant a restraining order.
- E. Judgment - The Court shall direct the records in the matter appealed from to be laid before it, hear the evidence and make such order approving, modifying, or setting aside the decision appealed from as justice may require, and may make a new order as a substitute for the order of the Board.
- F. Costs - Costs shall not be allowed against the municipality unless it appears to the Court that the Zoning Board of Adjustment acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.
- G. Priority - All proceedings under this Section shall be entitled to a speedy hearing.

## ARTICLE 1500 - ENFORCEMENT

### Section 1501 - Building Inspector

The Town Council shall appoint, for a term of one year, a Building Inspector who, by his training and experience, is qualified to administer this Ordinance. The Building Inspector shall be the Administrative Officer of this Ordinance.

### Section 1502 - Violation

Upon any well-founded information that the Town of Derry Zoning Ordinance, or the Town of Derry Building Code, or any provision or specification of any application, plat, or plan approved by, or any requirement or condition of a permit or decision issued by the Code Enforcement Officer, Building Inspector, Planning Board, or Zoning Board of Adjustment is being violated, the Building Inspector shall, on his own initiative, take immediate steps to enforce the provisions of the Zoning Ordinance, Building Code, provision or specification of the application, plat or plan approved by or the requirement or condition of a permit or decision issued by the Building Inspector or the local land use board, by seeking an injunction in the Superior Court or any other legal action.

### Section 1503 - Penalty

Whoever violates any of the provisions of the Town of Derry Zoning Ordinance, or the Town of Derry Building Code, or any provision or specification of any application, plat or plan approved by, or any requirement or condition of a permit or decision issued by the Code Enforcement Officer, Building Inspector, or local land use board, shall be punishable upon conviction by a fine not exceeding \$100 per day for each violation.

## ARTICLE 1600 - AMENDMENT

### Section 1601 - Procedure

The regulations, restrictions and boundaries as set forth in this Ordinance may, from time-to-time, be amended or repealed as authorized by RSA 674:16 in accordance with the provisions of RSA 675:2, 4 and 5 and the Town Charter.

## ARTICLE 1700 - CONFLICTING PROVISIONS

Whenever the regulations made under the authority hereof differ from those prescribed by any statute, ordinance, or other regulation, that provision which imposes the greater fee, restriction, or higher standard shall govern.

## ARTICLE 1800 - SEPARABILITY

Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

## ARTICLE 1900 - EFFECTIVE DATE

This Ordinance was adopted by the Town Council on January 5, 1993 and became effective on February 5, 1993. All other zoning ordinances or parts thereof and zoning maps that were in effect prior to February 5, 1993 are hereby repealed.

Section 2001 - Authority and Purpose

By the authority granted under RSA 674:21 I(j), Environmental Characteristics Zoning and RSA 674:16, Grant of Power, as amended, and in the interest of the public health, safety and the general welfare, the Groundwater Resource Conservation District (GRCD) is established to protect, preserve and maintain existing and potential groundwater resources and primary groundwater recharge areas within this district, known as aquifers, from adverse development, land use practices or depletion. Derry's Master Plan-1994 Update, adopted June 1994, and the Water Resource Management and Protection Plan, Adopted 1989, proposes such protection.

This is to be accomplished by regulating land uses which would contribute polluted water and pollutants to designated aquifers identified as being needed for present and future public and private water supply.

Section 2002 - District Defined

The GRCD is identified as those areas designated as stratified drift by blue shading which appears on maps prepared by U.S. Geological Survey in cooperation with the State of New Hampshire Department of Environmental Services Water Resources Division identified as U.S. Geological Survey, Water Resources Investigations Report (WRIR) 91-4025, Bow, New Hampshire 1992, or as amended.

These areas are subject to any additional standards which apply to the underlying zoning classification.

The GRCD map may be seen at the Planning Board office during their business hours.

Section 2003 - Resolution Of GRCD Boundary Disputes

1. Planning Board

During Planning Board review, when the actual boundary of the GRCD is disputed by any owner or abutter affected by said boundary, the Planning Board, at the owner/abutter's expense and request, may engage the services of a Professional Hydrologist, Certified Geologist, or Soil Scientist, or Registered Professional Engineer, to determine the site specific boundary of said District. Based upon the site specific, documented, scientific and technical information submitted by the qualified professional, in these cases, the Planning Board shall have the authority to make the final determination as to the location of a disputed boundary.

## 2. Code Enforcement Officer (CEO)

Approved building lots shall be under the authority of the CEO who may use the same professionals listed in 2003.1. Based upon the site specific, documented, scientific and technical information submitted by the qualified professional, in these cases, the CEO shall have the authority to make the final determination as to the location of a disputed boundary.

### Section 2004 - Definitions

**AQUIFER** - A geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or a spring under ordinary hydraulic gradients.

**DISCHARGE** - The spilling, leaking, pumping, pouring, emitting, emptying, or dumping of toxic or hazardous materials upon or into any land or waters in the Town of Derry. Discharge includes, without limitations, leakage of such materials from failed or discarded containers or underground or above ground storage systems, and disposal of such materials into any on-site sewage disposal system, dry well, catch basin, or unapproved landfill.

**GROUNDWATER** - Water below the land surface in the zone of saturation of the soil or rock and includes perched water separated from the main body of groundwater by an unsaturated zone.

**HAZARDOUS OR TOXIC MATERIALS AND WASTE** - Any substance or mixture of such physical, chemical, or infectious characteristics as to pose a significant, actual or potential hazard to water supplies, or other hazard to human health, if such substance or mixture were discharged to land or waters of this Town, as referenced below.

Toxic or hazardous materials include, without limitation, volatile organic chemicals, heavy metals, radioactive or infectious wastes, acids and alkalis, and include products such as pesticides, herbicides, solvents and thinner, and such other substances as defined in New Hampshire Water Supply and Pollution Control Div. Rules, Env-Wm 102.73 in New Hampshire Solid Waste Rules Document 5172, or as amended, as listed in N.H. Waste Management Division Hazardous Waste Rules Env-Wm 100 through Env-Wm 1000, as specified in Env-Wm Part 402 through Env-Wm Part 404.

#### **IMPERVIOUS SURFACE -**

- A. Created as a result of human activity, such as driveways, parking lots, roads, roof tops, compacted lawns and other features at or above the soil surface that impede infiltration of water into the soil to provide groundwater recharge.
- B. Naturally occurring relatively impervious conditions such as bedrock outcrops and soil with restrictive layers within 18 inches from below the natural soil surface.

**LEACHABLE WASTES** - Waste materials including solid wastes, sludge and agricultural wastes that are capable of releasing water-borne contaminants to the surrounding environment.

**MINING** - The removal of geological materials such as topsoil, sand, gravel, or bedrock.

**NON-CONFORMING USE** - Any lawful use of buildings, structures, premises, land or parts thereof existing as of the effective date of this Ordinance, or amendment thereto, and not in conformance with provisions of this Ordinance, shall be considered to be non-conforming use.

**PRIMARY RECHARGE AREA** - Areas that collect precipitation or surface water and transmit it into the area of contribution to existing or potential water supply wells. Primary recharge areas are stratified drift aquifer areas surrounding existing or potential water supply well sites.

**SATURATED ZONE** - The zone beneath the land surface in which all open spaces are filled with water.

**SANITARY WASTEWATER** - Wastewater arising from ordinary domestic water use as from toilets, sinks, bathing facilities, etc. and containing such concentrations and types of pollutants as to be considered normal household wastes.

**SLUDGE** - Residual materials produced by the sewage treatment process.

**SOLID WASTE** - Any discarded or abandoned material including refuse, putrescible material, septicage, or sludge as defined by New Hampshire Solid Waste Rules Env-Wm 100-2800, or as amended. Solid waste includes solid, liquid, semi-solid, or certain gaseous waste material resulting from residential, industrial, commercial, mining, and agricultural operations and from community activities.

**STRATIFIED DRIFT** - Sorted and layered unconsolidated deposits formed in streams flowing from glaciers or settled from suspension in quiet water bodies fed by such streams.

**STRUCTURE** - Anything constructed or erected, except a boundary wall or fence, the use of which requires location on the ground or attachment to something on the ground. For the purpose of this Ordinance, buildings are structures.

## Section 2005 - General Provisions

1. The Conservation Commission shall be notified by the Code Enforcement Officer, upon receipt of any permit application in the GRCD.
2. Rulings of the Code Enforcement Officer may be appealed to the Zoning Board of Adjustment (ZBA).
3. The ZBA may require that the applicant for a special exception provide data or reports by a Professional Hydrologist, Certified Geologist or Soil Scientist, or Registered Professional Engineer to certify with appropriate evidence that conditions in Section 2008, 1, 2, 3, and 4 are true. The ZBA may engage such professional assistance as it requires to adequately evaluate such reports and to assess the

proposed use in accordance with the above mentioned criteria. Said services shall be paid by the applicant.

4. All development proposals shall be subject to review in accordance with the provisions of the Town of Derry Land Development Control Regulations.
5. **RESIDENTIAL** - Nothing in this Article shall be deemed to prohibit the storage and handling of products for normal household use.

#### Section 2006 - Permitted Uses

Any use permitted in the underlying district shall be permitted within the GRCD except those which are expressly prohibited in Section 2007, with the following additional conditions:

**COVERAGE** - No more than 30 percent of a lot, shall be rendered impervious by building and pavement, unless the applicant demonstrates in the site plan application that he/she has incorporated engineering technology in the drainage design to allow recharge of the aquifer.

**ABOVE GROUND STORAGE** - Commercial and Industrial chemicals, road salt, fertilizers, herbicides, pesticides, and other hazardous or toxic materials and waste shall be stored within a fully enclosed structure, with an impermeable floor, designed to contain any spill within the structure.

**LOCATION** - Where the premises are partially outside of the GRCD, potential pollution sources such as on-site waste disposal systems shall be located outside the GRCD to the extent feasible.

**DRAINAGE** - All construction and/or development activities shall incorporate drainage design standards for stormwater management and erosion and sedimentation control which, at a minimum, reflect the recommendations of the publication *Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire*, prepared by the Rockingham County Conservation District, prepared for the DES in cooperation with the USDA Soil Conservation Service, August, 1992, or as amended.

**SEPTIC SYSTEM DESIGN AND INSTALLATION** - In addition to meeting all local and state septic system requirements, all new on-lot sanitary waste water disposal systems installed in the GRCD shall be designed by a septic system designer and installer licensed in New Hampshire. These systems shall be installed under the supervision of the Health Officer who shall perform a basic area inspection, in person, as part of said supervision.

The Health Officer, or qualified agent of the Town shall inspect the installation of each new system prior to covering, and shall certify that the system has been installed as designed.

Septic systems are to be constructed in accordance with the most recent edition of Chapter Env-Ws 1000, Subdivision and Individual Sewage Disposal System Design Rules as published by the New Hampshire Water Supply and Pollution Control Division, or as amended.

6. Manure, agricultural compost and chemical fertilizer shall be handled in accordance with RSA 431:33-35, or as amended. See Manual Of Best Management Practices For Agriculture in New Hampshire as prepared by New Hampshire Department of Agriculture, August, 1993 or as amended.

### Section 2007 - Prohibited Uses

The following uses shall not be permitted within the GRCD:

1. Disposal of solid waste.
2. Underground storage of hazardous or toxic materials and waste.
3. Industrial uses which discharge contact type process waters on-site. Non-contact cooling water is permitted.
4. Dumping of snow containing de-icing chemicals brought from outside the GRCD.
5. Junk and salvage yards.
6. All on-site treatment, disposal, or recycling of hazardous or toxic materials as a principle business operation.
7. Any other use or activity that, based upon the following Findings of Fact:
  - a. Will have a detrimental effect on the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants.
  - b. Will cause a significant reduction in the long-term volume of water contained in the aquifer, or in the storage capacity of the aquifer.
  - c. Will discharge wastewater on site other than that which is permitted under the provisions of this article.

### Section 2008 - Special Exceptions

#### HAZARDOUS OR TOXIC MATERIAL AND WASTE

Waste generated by, but not limited to, the following commercial activities are presumed to be toxic or hazardous, unless and except to the extent that anyone engaging in such an activity can demonstrate the contrary.

Airplane, boat and motor vehicle service and repair,  
Chemical and bacteriological laboratory operation,  
Dry Cleaning,  
Electronic circuit manufacturing,

Metal plating, finishing and polishing,  
Motor and machinery service and assembly,  
Painting, wood preserving and furniture stripping,  
Pesticide and herbicide application,  
Photographic processing,  
Printing

## PROCEDURES

The hearing for a special exception shall be held by the Zoning Board of Adjustment with mandatory attendance of the Planning Board and Conservation Commission to provide advice. In the case of any use which may be allowed by special exception in the underlying zoning district, it must be found by the ZBA, in written findings of fact, that all of the following are true.

1. The proposed use will not have a detrimental effect on the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long-term susceptibility of the aquifer to potential pollutants.
2. The proposed use will not cause a significant reduction in the long-term volume of water contained in the aquifer, or in the storage capacity of the aquifer.
3. The proposed use will discharge no wastewater on site other than that which is permitted under the provisions of this article.
4. The proposed use complies with all other applicable sections of this article.

## Section 2009 - Non-Conforming Uses

Any non-conforming use may continue and may be maintained, repaired, replaced, and improved, unless such use is determined to be an imminent hazard to the public health and safety by Town Council, Health Officer or Code Enforcement Officer.

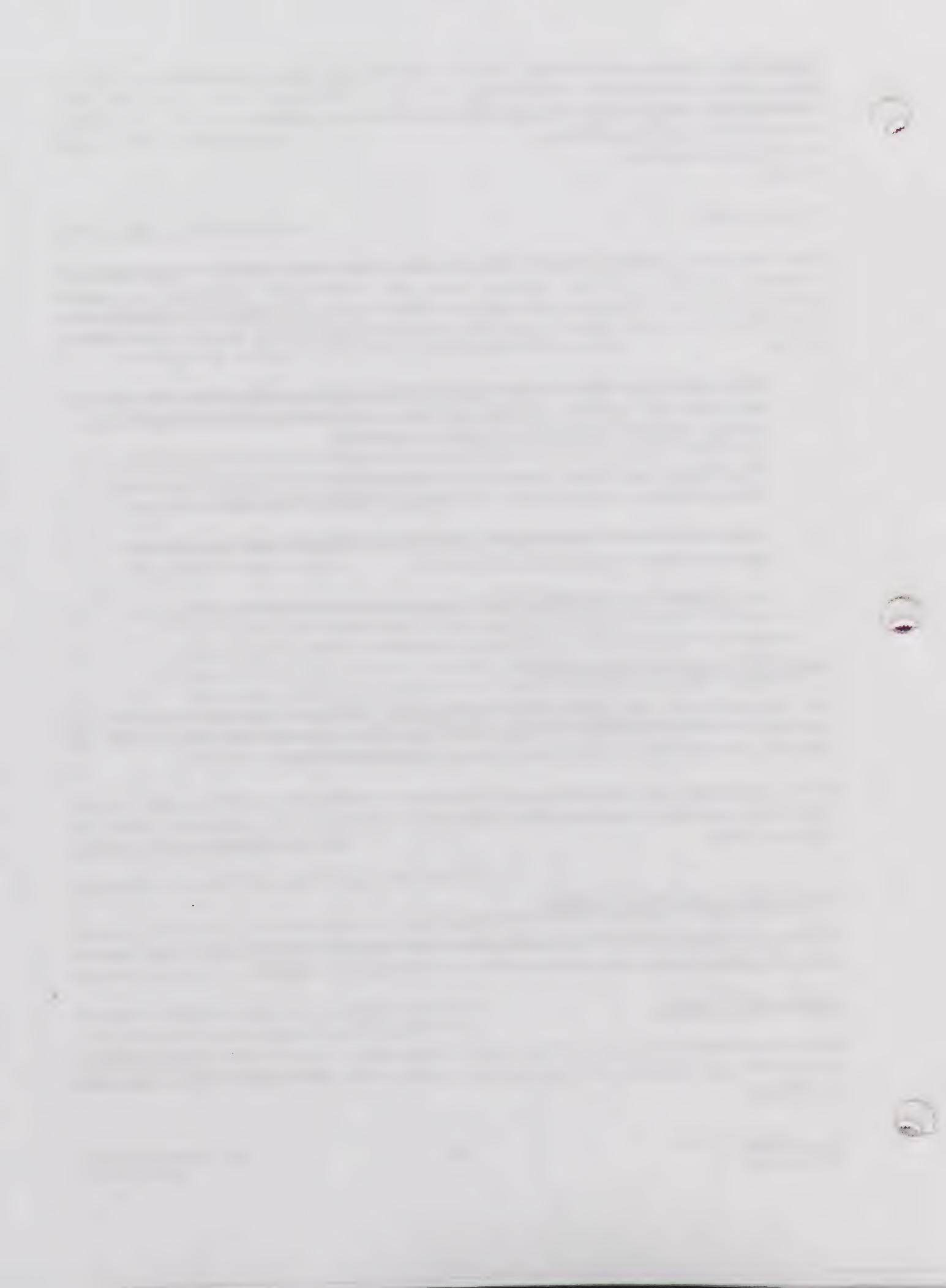
No non-conforming use may be expanded, changed to another non-conforming use. No non-conforming use may be renewed after it has been discontinued for a period of twelve (12) months or more.

## Section 2010 - Conflicting Provisions

In all cases where the GRCD is superimposed over another zoning district in the Town of Derry, that district whose regulations are the more restrictive shall apply.

## Section 2011 - Validity

Should any section or provision of this Article be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the Article as a whole or any other part thereof.

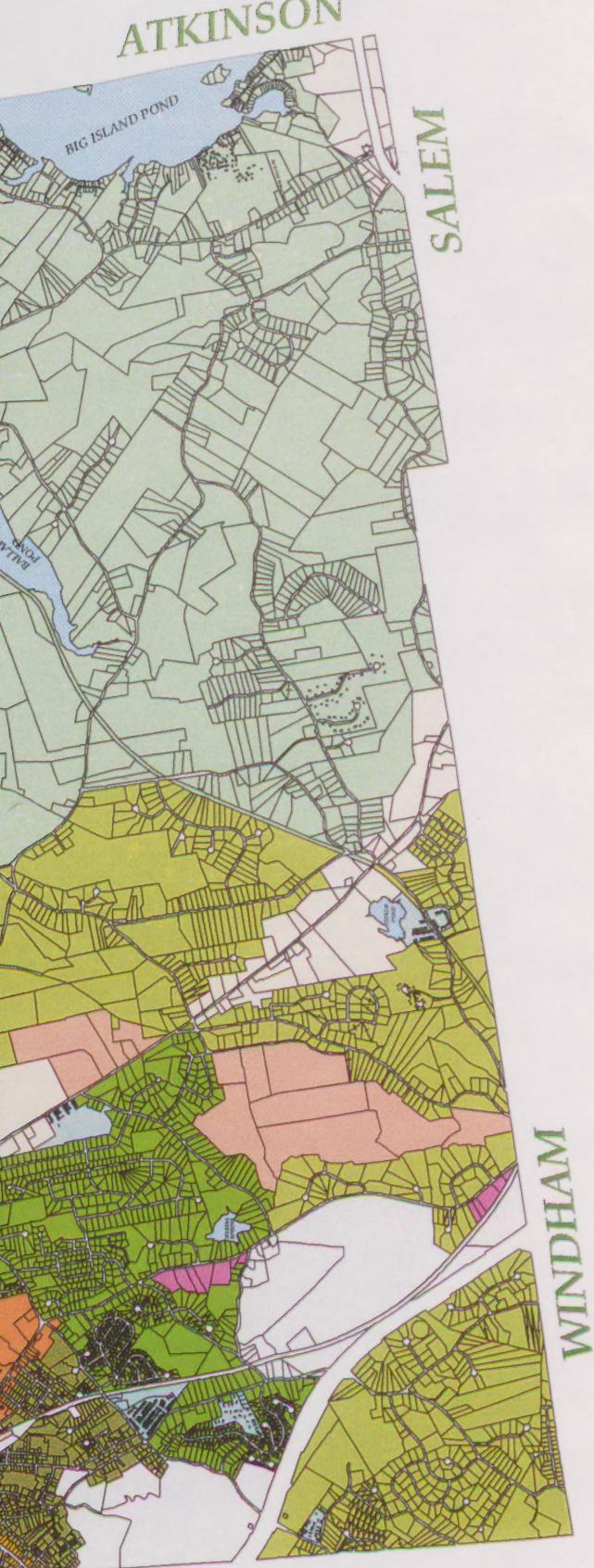


# DERRY ZONING



# DERRY ZONING





## For Reference

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### MAP KEY

#### ZONES

IND I-INDUSTRIAL I	IND II-INDUSTRIAL II	IND III-INDUSTRIAL III	IND IV-INDUSTRIAL IV	IND V-INDUSTRIAL V
LDR-LOW DENSITY RESIDENTIAL				
LMDR-LOW/MEDIUM DENSITY RESIDENTIAL				
MDR-MEDIUM DENSITY RESIDENTIAL				
MHDRI-MEDIUM/HIGH DENSITY RESIDENTIAL				
GC-GENERAL COMMERCIAL				
CBD-CENTRAL BUSINESS DISTRICT				
MFR-MULTI-FAMILY RESIDENTIAL				
MHPD-MANUFACTURED HOUSING PARK DEVELOPMENT				
OBD-OFFICE BUSINESS DISTRICT				
OMB-OFFICE MEDICAL BUSINESS				
ORD-OFFICE RESEARCH AND DEVELOPMENT				



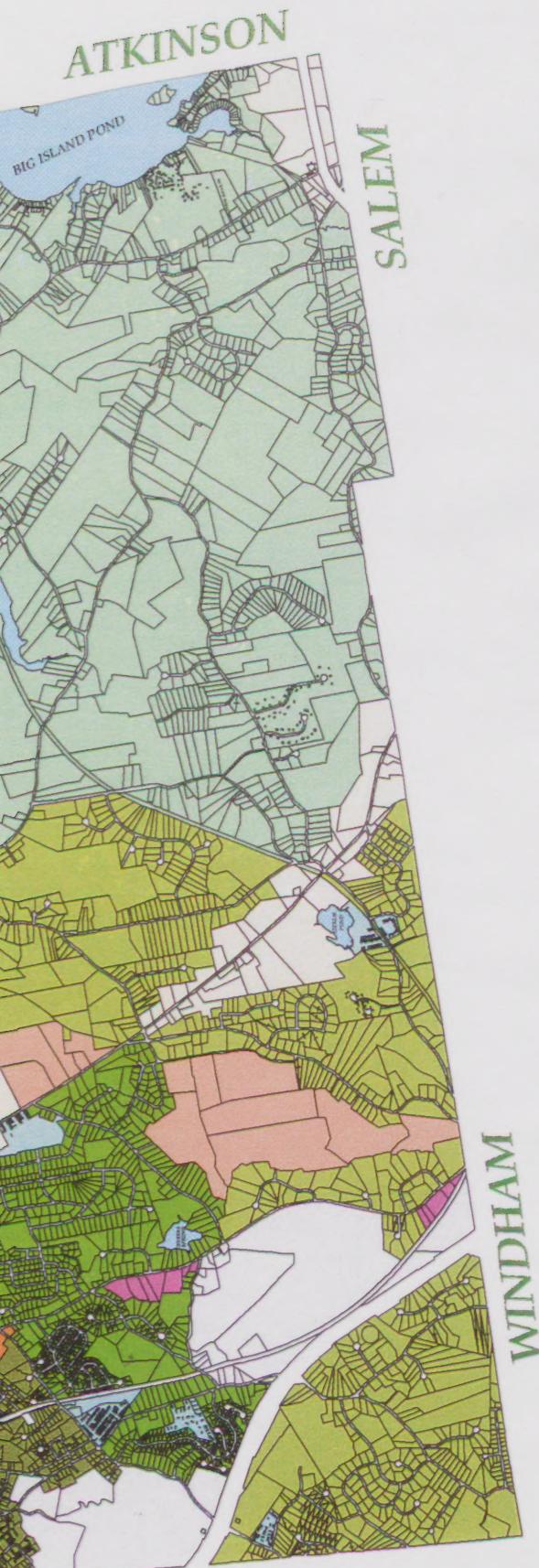
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### MAP KEY

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